(2)

No. 03-221

Supreme Court, U.S.
FILED
FEB 23 2004
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

CHERYL K. PLILER, Warden of California State Prison—Sacramento, *Petitioner,*

v.

RICHARD HERMAN FORD, *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED AUGUST 8, 2003
WRIT OF CERTIORARI GRANTED JANUARY 9, 2004

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The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the Petition for Writ of Certiorari:

Order Amending Opinion, and Denying Rehearing and Rehearing En Banc and Amended Opinion, for the Ninth Circuit Court of Appeals, amended May 15, 2003 A1-A45

Report and Recommendation of United States Magistrate Judge filed on July 20, 1998, Case No. CV 98-2557 RAP (SH) B1-B5

Order Adopting Report and Recommendation of United States Magistrate Judge filed on July 22, 1998, Case No. CV 98-2557 RAP (SH) B6-B7

Judgment of the United States District Court for Central District of California, entered on July 27, 1998, Case No. CV 98-2557 RAP (SH) B8

Report and Recommendation of United States Magistrate Judge filed on June 25, 1998, Case No. CV 98-2556 RAP (SH) C1-C6

Order Adopting Report and Recommendation of United States Magistrate Judge filed on June 29, 1998, Case No. CV 98-2556 RAP (SH) C7-C8

Judgment of the United States District Court entered on June 30, 1998, Case No. CV 98-2556 RAP (SH) C9

Report and Recommendation of United States Magistrate Judge filed on September 9, 1997, Case No. CV 97-3386 RAP (SH) D1-D2

Order Adopting Report and Recommendation of United States Magistrate Judge filed on October 8, 1997, Case No. CV 97-3386 RAP (SH) D3-D4

Judgment of the United States District Court entered on October 14, 1998, Case No. CV 97-3386 RAP (SH) D5

Report and Recommendation of United States Magistrate Judge filed on September 10, 1997, Case No. CV 97-3385 RAP (SH) E1-E4

Order Adopting Report and Recommendation of United States Magistrate Judge entered on September 11, 1997, Case No. CV 97-3385 RAP (SH) E5-E6

Judgment of the United States District Court entered on September 12, 1997, Case No. CV 97-3385 RAP (SH) E7

Docket as of June 17, 2003 7:31 pm

U.S. District Court
Central District of California (Western Div.)
CIVIL DOCKET FOR CASE #: 97-CV-3385
Richard Herman Ford v. S. Hubbard, et al
Filed: 05/05/97
Assigned to: Judge Richard A. Paez
Referred to: Magistrate Judge Stephen J. Hillman
Demand: $0,000 Nature of Suit: 530
Lead Docket: None
Jurisdiction: Federal Question
Dkt# in other court: None
Cause: 28:2254 Petition: Writ of H/C - State

RICHARD HERMAN FORD petitioner	Richard Herman Ford Prison No. E-10539 [COR LD NTC] [PRO SE] Represa California State Prison P O Box 290066 Represa, CA 95671-0066
v.	
S HUBBARD, Warden (A) CSP-SAC respondent	William T Harter FTS Ext 2386 FAX 213-897-6496 [COR LD NTC] Stephen M Kaufman FTS Ext 6753 FAX 213-897-6496 [COR LD NTC]
ATTORNEY GENERAL STATE OF CALIFORNIA respondent	Robert F Katz FTS Ext 2384 FAX 213-897-6496 [COR LD NTC]
DANIEL LUNGREN respondent	CAAG - Office of Attorney General of California 300 S Spring St, Ste 5000 Los Angeles, CA 90013-1230 213-897-2000

RICHARD HERMAN FORD
petitioner

v.

S HUBBARD, Warden
(A) CSP-SAC; ATTORNEY GENERAL
STATE OF CALIFORNIA; DANIEL LUNGREN
respondent

DOCKET PROCEEDINGS

5/5/97	1	PETITION FOR WRIT OF HABEAS CORPUS by petitioner Richard Herman Ford in State Custody referred to Magistrate Judge Stephen J. Hillman . (jp) [Entry date 05/08/97]
5/5/97	2	NOTICE and ORDER of Reference to Magistrate Judge Stephen J. Hillman (jp) [Entry date 05/08/97]
5/12/97	3	ORDER requiring ans to the ptn for writ of H/C by Magistrate Judge Stephen J. Hillman (see doc for details) (jag) [Entry date 05/14/97]
5/12/97	4	MINUTES: This case has been referred to Mag Judge Hillman. by Magistrate Judge Stephen J. Hillman CR: n/a (jag) [Entry date 05/14/97]
5/12/97	5	MINUTES: The crt is in rcpt of ptnr's mot to stay fed H/C ptn. Resp is ordered to resp to ptnr's mot in the ans to be fld by resp. by Magistrate Judge Stephen J. Hillman CR: n/a (jag) [Entry date 05/14/97]
5/16/97	6	RECEIPT of prf of delivery of MO ptn & ord dtd 5/12/97; served upon the Office of the Atty Gen on 5/15/9077 (jag) [Entry date 05/19/97]

5/19/97	7	RECEIPT of proof of selivery by mail of Ord/M.O. dtd 5/12/97 rcd by Richard Herman Ford on 5/14/97 (el) [Entry date 05/20/97]
6/2/97	8	APPLICATION by respondents for extension of time; decl of Stephen M Kaufman (jag) [Entry date 06/03/97]
6/2/97	--	LODGED/PROPOSED Order (FWD TO CRD) (jag) [Entry date 06/03/97]
6/4/97	9	ANSWER TO PETITION for Writ of H/C by respondent S Hubbard [1-1] (jag) [Entry date 06/05/97]
6/12/97	10	AMENDED ANSWER TO PETITION for Writ of H/C by respondent S Hubbard, respondent Atty General State, respondent Daniel NMI Lungren [1-1] (jag) [Entry date 06/13/97]
7/3/97	11	APPLICATION by respondents for extension of time; decl of Stephen M Kaufman (jag) [Entry date 07/08/97]
7/3/97	--	LODGED/PROPOSED ORDER submitted by respondent for application [11-1] .(FWD TO CRD) (jag) [Entry date 07/08/97]
7/7/97	12	ORDER re fur procdgs on a partially exhausted ptn (see doc for details) by Magistrate Judge Stephen J. Hillman (jag) [Entry date 07/10/97]
7/15/97	13	RETURN TO PETITION for Writ of H/C by respondent S Hubbard, respondent Atty General State, respondent Daniel NMI Lungren [1-1] (jag) [Entry date 07/16/97]
7/28/97	14	RETURN by petr Richard Herman Ford to crt ord re fur proceedings [12-1] & mot for ext of time. (gk) [Entry date 07/29/97]
7/28/97	15	TRAVERSE by petr Richard Herman Ford to

return [13-1]. (gk) [Entry date 07/29/97]

8/5/97 16 REPORT AND RECOMMENDATION of U.S. Magistrate Judge Stephen J. Hillman that the crt enter an ord denying the ptn & dismissing the actn w/out prej (jag) [Entry date 08/06/97]

8/5/97 17 NOTICE OF FILING REPORT AND RECOMMENDATION of U.S. Magistrate Judge Stephen J. Hillman and lodging of proposed judgment and/or ord (jag) [Entry date 08/06/97]

8/25/97 18 OBJECTIONS by petitioner Richard Herman Ford to Report and Recommendation [16-1] (jag) [Entry date 08/26/97]

9/10/97 19 FINAL REPORT AND RECOMMENDATION of U.S. Magistrate Judge Stephen J. Hillman (ENT 9/12/97) mld cpys (bp) [Entry date 09/12/97]

9/10/97 22 MINUTES: This crt has rcvd & reviewed ptnr's amd ptn for writ of H/C. The crt clk is ordered to reject & return to ptnr the amd ptn for the reasons stated in the final R&R issd by this crt. by Magistrate Judge Stephen J. Hillman CR: n/a (jag) [Entry date 09/12/97]

9/11/97 20 ORDER by Judge Richard A. Paez adopting final report & recommendation of the U.S. Mag Judge [19-1] (ENT 9/12/97) mld cpys & ntc. (bp) [Entry date 09/12/97]

9/11/97 21 JUDGMENT AND ORDER: It is ADJUDGED that the petition for writ of H/C is dismissed without prejudice. by Judge Richard A. Paez . terminating case (ENT 9/12/97) MD JS-6 mld cpys (bp) [Entry date 09/12/97]

7/25/01 23 Order From USCA: Aplles' mot to strike portions of the ecerpts of record is ref to panel

that will decide merits of this app. Applnt's mot for reief is den as unnecessary. This case is ready for cal. 98-80477, 98-80603 (dl) [Entry date 08/10/01]

10/29/01 -- CLERK'S record on appeal transmitted to Circuit vols: 1 (related CA # 98-56587) (dl) [Entry date 10/29/01]

6/13/02 24 Order from USCA: Submission of these cases is vac. The cases will be held pending the Supreme Crt's decision in Saffold v. Newland, 250 F.3d 1262 (9th Cir.2000), cert. gr, 122 S. Ct. 393 (2001) (No. 01-301). 98-80477, 98-80582, 98-80603 (dl) [Entry date 06/24/02]

6/2/03 25 ORDER FROM USCA Respondents-Appellees' motion for a 90-day stay of the issuance of the mandate pending application for writ of certiorari is granted. Therefore, it is ordered that the mandate is stayed for ninety (90) days pending the Respondents-Appellees' potential filing of a petition for writ of certiorari in the supreme Court. If such a petition is filed, and if the writ of certiorari is granted by the Supreme Court, the stay shall continue until final disposition by the Supreme Court. (98-80477, 98-80582, 98-80603) (pjap) [Entry date 06/17/03]

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Docket as of October 29, 2001 7:21 pm

U.S. District Court
Central District of California (Western Div.)
CIVIL DOCKET FOR CASE #: 97-CV-3386
Richard Herman Ford v. S. Hubbard, et al
Filed: 05/05/97
Assigned to: Judge Richard A. Paez
Referred to: Magistrate Judge Stephen J. Hillman
Demand: $0,000 Nature of Suit: 530
Lead Docket: None Jurisdiction: Federal Question
Dkt# in other court: None
Cause: 28:2254 Petition: Writ of H/C - State

RICHARD HERMAN FORD petitioner	Richard Herman Ford Prison No. E-10539 [COR LD NTC] [PRO SE] Represa California State Prison P O Box 290066 Represa, CA 95671-0066
v.	
S HUBBARD, Warden (A) CSP-SAC respondent	Paul C Ament FTS Ext 2248 FAX 213-897-6496 [COR LD NTC] Robert F Katz FTS Ext 2384 FAX 213-897-6496 [COR LD NTC] CAAG - Office of Attorney General of California 300 S Spring St, Ste 500 Los Angeles, CA 90013-1204 213-897-2000
ATTORNEY GENERAL STATE OF CALIFORNIA respondent	Paul C. Ament (See above) [COR LD NTC] Robert F Katz (See above) [COR LD NTC]
DANIEL LUNGREN respondent	Paul C Ament (See above) [COR LD NTC]
RICHARD HERMAN FORD petitioner	

v.

S HUBBARD, Warden (A) CSP-SAC; ATTORNEY GENERAL STATE OF CALIFORNIA; DANIEL LUNGREN
respondent

DOCKET PROCEEDINGS

5/5/97	1	PETITION FOR WRIT OF HABEAS CORPUS by petitioner Richard Herman Ford in State Custody referred to Magistrate Judge Stephen J. Hillman . (jp) [Entry date 05/08/97]
5/5/97	2	NOTICE and ORDER of Reference to Magistrate Judge Stephen J. Hillman (jp) [Entry date 05/08/97]
5/12/97	3	MINUTES: Resp is ordered to resp to ptnr's mot in the ans to be filed by resp. by Magistrate Judge Stephen J. Hillman CR: n/a (tw) [Entry date 05/14/97]
5/12/97	4	ORDER requiring ans to ptn for writ of habeas corpus & instructions re fur proceedings by Magistrate Judge Stephen J. Hillman . It is ordered that the resp or atty general of state of calif file an ans to ptn not later than 20 dys after filing dt of this ord. It is fur ordered that ptnr file a single traverse to the ans & return w/i 20 dys after the filing of the return (tw) [Entry date 05/14/97] [Edit date 05/14/97]
5/12/97	5	MINUTES: This case has been referred to Magistrate Judge Stephen J. Hillman. All future pldgs & correspondence sh be addressed to Sandra Butler. by Magistrate Judge Stephen J. Hillman CR: n/a (tw) [Entry date 05/15/97]
5/22/97	6	RECEIPT showing proof of delivery by legal

		mail of ord req ans received by Richard Ford on 5/19/97 (shb) [Entry date 05/28/97]
5/30/97	7	ANSWER TO PETITION for Writ of H/C by respondent S Hubbard, respondent Atty General State, respondent Daniel NMI Lungren [1-1] (shb) [Entry date 06/02/97]
6/2/97	8	Certified mail return RECEIPT showing proof of delivery of order req ans to petition, first min otd and min ord re pltf mot received by Torres, Office of the A/G on 5/16/97 (shb) [Entry date 06/03/97]
6/3/97	9	ORDER RE TRANSF PURS TO GO 224 (REL CSE) by Judge James M. Ideman Case reassigned to Judge Richard A. Paez for all further proceedings [L/N CV97-3385 RAP (SH)] (cc: ptys) (jc) [Entry date 06/03/97]
6/20/97	10	RETURN TO PETITION for Writ of H/C by respondent S Hubbard, respondent Atty General State, respondent Daniel NMI Lungren [1-1] (jag) [Entry date 06/24/97]
7/15/97	11	TRAVERSE by petitioner Richard Herman Ford to return to petition [10-1] (bp) [Entry date 07/16/97]
7/15/97	12	RESPONSE; Return to respondent's answer with exhibits A, B, & C. by petitioner Richard Herman Ford to [10-1] (bp) [Entry date 07/16/97]
8/4/97	13	ORDER by Magistrate Judge Stephen J. Hillman re fur proceedings on a partially exhausted petn: petr's mot for stay is denied. (dh) [Entry date 08/07/97]
9/9/97	14	NOTICE OF FILING REPORT AND RECOMMENDATION of U.S. Magistrate Judge Stephen J. Hillman and lodging of

proposed judgment (yt) [Entry date 09/11/97]

9/9/97 15 REPORT AND RECOMMENDATION of U.S. Magistrate Judge Stephen J. Hillman (yt) [Entry date 09/11/97]

9/18/97 16 RECEIPT of proof of delivery by legal mail, signe by Richard Herman on 9/12/97. (bp) [Entry date 09/22/97]

10/8/97 17 ORDER by Judge Richard A. Paez adopting report and recommendation motion NOTICE OF FILING REPORT AND RECOMMENDATION [14-1] (ENT 10/14/97) mld cpys & ntc. (bp) [Entry date 10/14/97]

10/8/97 18 JUDGMENT AND ORDER: It is ADJUDGEDthat the pet for writ of H/C is dismissed without prej. by Judge Richard A. Paez. terminating case (ENT 10/14/97) MD JS-6 mld cpys & ntc. (bp) [Entry date 10/14/97]

10/29/01 -- CLERK'S record on appeal transmitted to Circuit vols: 1 (Related CA # 98-56587) (dl) [Entry date 10/29/01]

Docket as of June 17, 2003 7:33 pm

U.S. District Court
Central District of California (Western Div.)
CIVIL DOCKET FOR CASE #: 98-CV-2556
Richard Herman Ford v. S Hubbard, et al
Filed: 04/07/98
Assigned to: Judge Richard A. Paez
Referred to: Magistrate Judge Stephen J. Hillman
Demand: $0,000
Nature of Suit: 530
Lead Docket: None
Jurisdiction: Federal Question
Dkt # in other court: None
Cause: 28:2254 Petition: Writ of H/C - State

RICHARD HERMAN FORD petitioner	Richard Herman Ford Prison No. E-10539 [COR LD NTC] [PRO SE] Represa California State Prison P O Box 290066 Represa, CA 95671-0066
v.	
S HUBBARD, Warden respondent	William T Harter FTS Ext 2386 FAX 213-897-6496 [COR LD NTC] Paul C Ament FTS Ext 2248 FAX 213-897-6496 [COR LD NTC] CAAG - Office of Attorney General of California 300 S Spring St, Ste 5000 Los Angeles, CA 90013-1230 213-897-2000
DANIEL LUNGREN respondent	Paul C Ament (See above) [COR LD NTC]

RICHARD HERMAN FORD
petitioner

v.
S HUBBARD, Warden;
DANIEL LUNGREN
respondent

DOCKET PROCEEDINGS

4/7/98	1	PETITION FOR WRIT OF HABEAS CORPUS by petitioner Richard Herman Ford in state Custody referred to Magistrate Judge Stephen J.Hillman . (bg) [Entry date 04/13/98]
4/7/98	2	NOTICE and ORDER of Reference to Magistrate Judge Stephen J. Hillman (bg) [Entry date 04/13/98]
4/9/98	3	MINUTES: Re fur procdgs by Magistrate Judge Stephen J. Hillman CR: none (lc) [Entry date 04/13/98]
4/9/98	4	ORDER req ans to petn; resp file ans nlt 20 days aft filing date of this ord and lodge all pertinent state recs; petrn file single trav to ans and retn w/i 20 days aft filing of retn; 30 days aft retn, case wil be deemed subm by Magistrate Judge Stephen J. Hillman (lc) [Entry date 04/13/98]
4/16/98	5	RETURN RECEIPT of Certified Mail showing delivery to CAAG rcvd by B E Knecht of petn, min of 4/10/98 on 4/14/98 (lc) [Entry date 04/17/98]
4/29/98	6	ANSWER TO PETITION for Writ of H/C by respondents [1-1] (el) [Entry date 04/30/98]
5/11/98	7	NOTICE OF MOTION AND MOTION by respondent S Hubbard, respondent Daniel

		Lungren to dismiss (dmjr) [Entry date 05/12/98]
5/13/98	8	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 224 (Related Case) filed. [Related Case no.: CV97-3385 RAP (SH)] Case transferred from Judge William D. Keller to Judge Richard A. Paez for all further proceedings. The case number will now reflect the initials of the transferee Judge [CV98-2556 RAP (SH)]. (cc: all counsel) (jc) [Entry date 05/13/98]
5/13/98	9	MINUTES: This Crt has rcvd rspdnts' Mot to Dism filed on 5/11/98. Any Opp or Ntc of Non-Opp shall be svd and filed by 5/26/98. A Reply shall be due by 6/2/98. the mtr will thereafter be taken under submission by Magistrate Judge Stephen J. Hillman CR: n/a (pbap) [Entry date 05/14/98]
5/22/98	10	APPLICATION for ext of ti to fi retn to 30 days after denial pf res' mtn to dism by respondents (el) [Entry date 05/27/98]
5/22/98	--	LODGED/PROPOSED ORDER submitted by respondent for application [10-1] .(FWD TO CRD) (el) [Entry date 05/27/98]
5/27/98	11	OPPOSITION by petitioner to motion to dismiss [7-1] (dmjr) [Entry date 05/28/98]
5/28/98	12	ORDER by Magistrate Judge Stephen J. Hillman granting application [10-1] respondents hv 30 days following any denial of mot to dism to fi retn to petn. Petnr may fi a trav 15 days thereafter (dmjr) [Entry date 06/01/98]
6/1/98	13	REPLY by respondent to response to motion to dismiss [7-1] (dmjr) [Entry date 06/03/98]
6/3/98	14	REPORT AND RECOMMENDATION issd by Magistrate Judge Stephen J. Hillman

recommending that the Crt issue an Ord: (1) approving and adopting this R & R; and (2) directing tht jgm be entrd dism the actn w/prej. (pbap) [Entry date 06/05/98]

6/4/98 15 NOTICE OF FILING REPORT AND RECOMMENDATION by Magistrate Judge Stephen J. Hillman and Lodging of Proposed Judgment and Order (pbap) [Entry date 06/05/98]

6/23/98 16 OPPOSITION by petitioner Richard Herman Ford to the rept & recommendation of US Mag Judge [14-1] (et) [Entry date 06/24/98]

6/25/98 17 REPORT AND RECOMMENDATION issd by Magistrate Judge Stephen J. Hillman recommending that the crt iss an ord approving & adopting this R&R; & dir tht jgm be ent dism the act w/prej. (mld cpies & nots) (lori) [Entry date 06/30/98] [Edit date 06/30/98]

6/29/98 18 ORDER by Judge Richard A. Paez adopting R&R of US Mag Judge [17-1] (Ent 6/30/98), mld cpies & nots. (lori) [Entry date 06/30/98]

6/29/98 19 JUDGMENT tht the pet for Writ of Habeas Corpus is dism w/prej by Judge Richard A. Paez. terminating case (Ent 6/30/98), Mld cpies & nots, MD JS-6. (lori) [Entry date 06/30/98]

7/27/98 20 NOTICE OF APPEAL by petitioner Richard Herman Ford to 9th C/A from Dist. Court ord ent 6/20/98 [19-2] (cc: Richard Herman Ford: St. Atty Gen) COA/CPC Pending) (dmap) [Entry date 07/28/98]

7/27/98 21 PETITION/Mottion for Appealabity Certification by petitioner Richard Herman Ford (FWD TO CRD) (dmap) [Entry date 07/28/98]

7/27/98 -- LODGED Mot for lv to app in Forma Pauperis

submitted by petitioner Richard Herman Ford (FWD TO CRD) (dmap) [Entry date 07/28/98]

8/3/98 22 ORDER by Judge Richard A. Paez denying petition for Certificate of Appealability for the following reasons stated in the Report & Recommendation on 6/29/98 and as appended hereto, there has been no substantial showing of the dneial of a constitutional right. [21-1] (fvap) [Entry date 08/07/98]

8/12/98 23 CERTIFICATE of Record Transmitted to USCA (cc: all parties) (pjap) [Entry date 08/12/98]

8/12/98 -- CLERK'S record on appeal transmitted to Circuit [20-1] vols: 1 (pjap) [Entry date 08/12/98]

8/28/98 24 NOTIFICATION by Circuit Court of Appellate Docket Number appeal [20-1] 98-56331 (ghap) [Entry date 09/01/98]

9/1/98 25 NOTICE OF APPEAL by petitioner Richard Herman Ford to 9th C/A from Dist. Court Ord fld 8/3/98 [22-1] (cc: Richard Herman Ford; State Attorney General) Fee: FP Pending. (pjap) [Entry date 09/14/98]

9/1/98 -- LODGED Motion, Affidavit & Ord re Appeal In Forma Pauperis submitted by petitioner Richard Herman Ford (FWD TO CRD) (pjap) [Entry date 09/22/98]

9/16/98 26 MINUTES: Crt refers plf's req for lv to proceed in forma pauperis to the Mag Judge for preparation of propsd ord. by Judge Richard A. Paez CR: n/a (jag) [Entry date 09/17/98]

9/28/98 -- LODGED 9th cca ord req for a cert of appealability is denied. (FWD TO CRD) CA# 98-56331 (ghap) [Entry date 10/19/98]

10/1/98	27	CERTIFIED COPY of Appellate Court Order: 98-56331 denying certificate of appealability [20-1]. (ENT 10/6/98) mld cpys (pbap) [Entry date 10/06/98]
10/2/98	28	MANDATE from Circuit Court of Appeals tht the certificate of appealability is hereby filed and spread upon the minutes of this Dist Crt. (pbap) [Entry date 10/06/98]
10/2/98	31	RECORD on appeal returned from U.S. Court of Appeals re appeal [25-1] vols: 1 (dl) [Entry date 10/20/98]
10/5/98	29	ORDER by Judge Richard A. Paez granting Forma Pauperis status on appeal; denying certificate of appealability [0-0] (fvap) [Entry date 10/08/98]
10/14/98	30	NOTIFICATION by Circuit Court of Appellate Docket Number appeal [25-1] 98-56587 (pjap) [Entry date 10/14/98]
7/25/01	32	Order From USCA: Apells' mot to strike portions of the excerpts of record is ref to panel that will decide the merits of this app. Applnt's mot for relief is den unnecessary. This case is ready for cal. #98-56587 (dl) [Entry date 08/10/01]
10/29/01	--	CLERK'S record on appeal transmitted to Circuit [25-1] vols: 1 (# 98-56587) (dl) [Entry date 10/29/01]
6/13/02	33	Order from USCA: Submission of these cases is hereby vac. The cases will be held pending the Supreme Crt's decision in Saffold v. Newland, 250 F.3d 1262 (9th Cir. 2000), cert. gr, 122 S.Ct. 393 (2001) (No. 01-301) 98-56587 (dl) [Entry date 06/24/02]
6/2/03	34	ORDER FROM USCA Respondents-Appellees'

motion for a 90-day stay of the issuance of the mandate pending application for writ of certiorari is granted. Therefore, it is ordered that the mandate is stayed for ninety (90) days pending the Respondents-Appellees' potential filing of a petition for writ of certiorari in the Supreme Court. If such a petition is filed, and if the writ of certiorari is granted by the Supreme Court, the stay shall continue until final disposition by the Supreme Court. ((98-56587) (pjap) [Entry date 06/17/03]

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Docket as of June 17, 2003 7:33 pm

U.S. District Court
Central District of California (Western Div.)

CIVIL DOCKET FOR CASE #: 98-CV-2557
Richard H Ford v. S Hubbard, et al
Filed: 04/07/98
Assigned to: Judge Richard A. Paez
Referred to: Magistrate Judge Stephen J. Hillman
Demand: $0,000
Nature of Suit: 530
Lead Docket: None
Jurisdiction: Federal Question
Dkt# in other court: None
Cause: 28:2254 Petition: Writ of H/C - State

RICHARD HERMAN FORD petitioner	Richard Herman Ford Prison No. E-10539 [COR LD NTC] [PRO SE] Represa California State Prison P O Box 290066 Represa, CA 95671-0066
v.	
S HUBBARD, Warden respondent	Stephen M Kaufman FTS Ext 6753 FAX 213-897-6496 [COR LD NTC] Kenneth C Byrne FTS Ext 2687 FAX 213-897-6496 [COR LD NTC] CAAG - Office of Attorney General of California 300 S Spring St, Ste 5000 Los Angeles, CA 90013-1230 213-897-2000

RICHARD HERMAN FORD
petitioner

v.

S HUBBARD, Warden; DANIEL LUNGREN
respondent

DOCKET PROCEEDINGS

4/7/98	1	PETITION FOR WRIT OF HABEAS CORPUS by petitioner Richard Herman Ford in state Custody referred to Magistrate Judge Stephen J. Hillman . (bg) [Entry date 04/13/98]
4/7/98	2	NOTICE and ORDER of Reference to Magistrate Judge Stephen J. Hillman (bg) [Entry date 04/13/98]
4/9/98	4	ORDER by Magistrate Judge Stephen J. Hillman that respndts or Atty General of State of CA are ord to file an ans to petn NLT 20 days after the flg date of this ord. Respndts shall file a return to petn NLT 30 days after the flg of the ans. Petr is ord to file a single traverse to the ans & return w/in 20 days after the flg of the return. (see orig doc for addtl info). (dhl) [Entry date 04/13/98]
4/10/98	3	MINUTES: This case has been ref'd to Mag Judge Hillman. All future pleadings & correspondence shall be addressed to Sandra Butler, Clerk to Mag Judge Hillman (please see orig doc for instructions in preparing & sumitting all pleadings). by Magistrate Judge Stephen J. Hillman CR: n/a (dhl) [Entry date 04/13/98]

4/16/98	5	RETURN RECEIPT of Certified Mail showing delivery to CAAG rcvd by B E Knecht of petn, ord of 4/10/98 on 4/14/98 (lc) [Entry date 04/17/98]
4/29/98	6	ANSWER TO PETITION for Writ of H/C by respondent [1-1] (el) [Entry date 04/30/98]
5/13/98	7	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 224 (Related Case) filed. [Related Case no.: CV97-3385 RAP (SH)] Case transferred from Judge Edward Rafeedie to Judge Richard A. Paez for all further proceedings. The case number will now reflect the initials of the transferee Judge[CV98-2557RAP (SH)]. (cc: all counsel) (jc) [Entry date 05/13/98]
5/20/98	8	APPLICATION for ext of ti by respondents (pbap) [Entry date 05/21/98]
5/20/98	--	LODGED/PROPOSED ORDER submitted. (FWD TO CRD) (pbap) [Entry date 05/21/98]
5/21/98	9	ORDER by Magistrate Judge Stephen J. Hillman granting application [8-1] that res is granted to & incl 6/28/98 in wh/c to fi the ord retn to the amd ptn; that ptnr is granted 21 days to fi a traverse to the ans. (el) [Entry date 05/26/98]
6/5/98	10	NOTICE OF MOTION AND MOTION by respondent S Hubbard, respondent Daniel Lungren to dismiss petn (dmjr) [Entry date 06/08/98]
6/5/98	11	NOTICE by respondent of lodging docs (dmjr) [Entry date 06/08/98]
6/8/98	12	MINUTES: opp to mot to dism by 6/2/298, rply by 6/29/98, matter then under subm by Magistrate Judge Stephen J. Hillman CR: n/a (dmjr) [Entry date 06/08/98]

6/10/98	13	MINUTES (in chambers): by Magistrate Judge Stephen J. Hillman Ord filed 05/28/98 is hereby mod to provide that petr may file a Traverse within 20 dyas aft resp files a Rtn (in the event that the resp mtn to dism is den) CR: N/A (rm) [Entry date 06/16/98]
6/17/98	14	OPPOSITION by petitioner to motion to dismiss petn [10-1] (dmjr) [Entry date 06/18/98]
6/26/98	15	NOTICE OF FILING REPORT AND RECOMMENDATION by Magistrate Judge Stephen J. Hillman and Lodging of Proposed Judgment and Order (et) [Entry date 06/30/98]
6/26/98	16	REPORT AND RECOMMENDATION issd by Magistrate Judge Stephen J. Hillman recommending that to Judge Richard A. Paez (et) [Entry date 06/30/98]
7/16/98	17	OPPOSITION by petitioner Richard Herman Ford to Report and Recommendation [16-1] (pbap) [Entry date 07/22/98]
7/20/98	18	REPORT AND RECOMMENDATION issd by Magistrate Judge Stephen J. Hillman (dmjr) [Entry date 07/27/98]
7/22/98	19	ORDER by Judge Richard A. Paez adopting [18-1] R&R (ENT 7/27/98) cc: counsel (dmjr) [Entry date 07/27/98]
7/22/98	20	JUDGMENT AND ORDER: by Judge Richard A. Paez. dismissing the habeas corpus petition [1-1] w/prej terminating case MD JS-6 (ENT 7/27/98) md ntc (cc: all counsel) (dmjr) [Entry date 07/27/98]
8/17/98	21	NOTICE OF APPEAL by petitioner Richard Herman Ford to 9th C/A from Dist. Court Jgm & Ord fld 7/22/98 & ent 7/27/98 [20-1][19-1] (cc: Richard Herman Ford; State Attorney

		General) CPC/COA Pending. (pjap) [Entry date 08/21/98]
8/17/98	22	PETITION/Notice and Motion For Appealability Certification by petitioner Richard Herman Ford (FWD TO CRD) (pjap) [Entry date 08/21/98]
8/17/98	--	LODGED Motion, Affidavit & Ord re: Appeal In Forma Pauperis submitted by petitioner Richard Herman Ford (FWD TO CRD) (pjap) [Entry date 08/21/98]
8/21/98	23	NOTICE OF REFERRAL of Matter to the Magistrate Judge filed; referring ntc & mot for appealability certification to Magistrate Judge Stephen J. Hillman (jag) [Entry date 08/25/98]
8/25/98	24	ORDER by Judge Richard A. Paez denying petition for certificate of appealability, and granting in forma pauperis status on appeal. [22-1] (fvap) [Entry date 08/28/98]
9/14/98	25	CERTIFICATE of Record Transmitted to USCA (cc: all parties) (dl) [Entry date 09/14/98]
9/14/98	--	CLERK'S record on appeal transmitted to Circuit [21-1] vols: 1 and 1 envelope ldg docs (dl) [Entry date 09/14/98]
9/16/98	26	NOTIFICATION by Circuit Court of Appellate Docket Number appeal [21-1] 98-56455 (dl) [Entry date 09/17/98]
2/3/99	28	RECORD on appeal returned from U.S. Court of Appeals re appeal [21-1] vols: 1 & 1 envelope of st crt ldg doc's (ghap) [Entry date 04/20/99]
2/22/99	27	RECEIPT frm CA Atty Gen for retn of doc lodged 6/5/98 (dmjr) [Entry date 02/24/99]
3/1/01	29	ORDER FROM USCA: Applnt's 'motn to compel filing of applnt's opening brief &

		excerpts of record nunc pro tunc" construed as motn for relief fr default. So construed, motn gr. Brief set. (98-56455; 98-56587; 98-80477; 98-80603) (wdc) [Entry date 03/14/01]
7/25/01	30	Order From USCA: Aplles' mot to strike portions of excerpts of record is ref to panel that will decide the merits of this app. Applnt's mot for relief is den as unnecessary. This case is ready for cal. #98-56455 (dl) [Entry date 08/10/01]
10/1/01	--	CLERK'S record on appeal transmitted to Circuit [21-1] vol: 1 (98-56455). (wdc) [Entry date 10/01/01]
6/13/02	31	ORDER FROM USCA: submission of these cases is hereby vac. The cases will be held pending the Supreme Court's decision. (98-56455) (weap) [Entry date 06/21/02] [Edit date 06/21/02]
6/2/03	32	ORDER FROM USCA Respondents-Appellees' motion for a 90-day stay of the issuance of the mandate pending application for writ of certiorari is granted. Therefore, it is ordered that the mandate is stayed for ninety (90) days pending Respondents-Appellees' potential filing of a petition for writ of certiorari in the Supreme Court. If such a petition is filed, and if the writ of certiorari is granted by the Supreme Court, the stay shall continue until final disposition by the Supreme Court. (98-56455) (pjap) [Entry date 06/17/03]

Docket as of September 9, 2003 11:15 pm

GENERAL DOCKET
US Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 98-56455 Filed: 9/15/98
Nsuit: 3530 Habeas corpus (Fed)
Ford v. Hubbard, et al
Appeal from: Central District of California, Los Angeles

Case type information:
1) prisoner petition
2) state
3) habeas corpus

Lower court information:

District: 0973-2 : CV-98-02557-RAP-SH
presiding judge: Terry J. Hatter, Jr., Chief District Judge
presiding judge: Richard A. Paez, District Judge
Date Filed: 4/7/98
Date order/judgment: 7/27/98
Date NOA filed: 8/17/98

Fee status: in forma pauperis

Prior cases:
None

Current cases:

	Lead	Member	Start	End
companion:	98-80477	98-80603	9/28/98	

consolidated:

98-56455	98-80603	1/22/99
98-56455	98-80582	1/22/99
98-56455	98-80477	1/22/99
98-56455	98-56587	1/22/99

related:

98-56331	98-80582	9/10/98
98-56331	98-56587	9/25/98
98-56331	98-56455	9/15/98

RICHARD HERMAN FORD
Petitioner - Appellant

Richard Herman Ford
#E-10539
[COR LD NTC prs]
P.O. Box 290066
Represa, CA 95671

Lisa M. Bassis
323/848-8733
[COR LD NTC cja]
Lisa M. Bassis
(See above)
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P.O. Box 691956
Los Angeles, CA 90069

v.

S. HUBBARD, Warden
Respondent - Appellee

Paul C. Ament
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213-897-2000
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[COR LD NTC dag]
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RICHARD HERMAN FORD
Petitioner - Appellant

v.

S. HUBBARD, Warden;
DANIEL E. LUNGREN, Attorney General
Respondents - Appellees

98-56455 Ford v. Hubbard, et al

9/15/98 Filed request for a certificate of appealability. Date COA denied in DC: 8/25/98 District Court file included (y/n): y (1 Orig. DC file & 1 envelope of lodged documents)(MOATT) (lu) [98-56455]

9/15/98 Filed certificate of record on appeal RT filed in DC NT. (case file) [98-56455] (lu) [98-56455]

1/20/99 FILED CERTIFIED RECORD ON APPEAL: 1 CLERKS REC 0 RTs 1 LARGE ENVELOPE - LODGING OF DOCUMENTS (orig) [98-56455] (mu) [98-56455]

1/22/99 Filed order (Robert R. BEEZER, Andrew J. KLEINFELD, Michael D. HAWKINS): The court con these matters to enable the court to conduct a complete review of the records. The court also grants the request for a COA to address the statute of limitations issue. As to other issues raised by pet, the request for COA is dn without prejudice to renewal by csl based upon a complete review of the records. Appellant is granted leave to proceed IFP. The court also appoints csl for appellant. Csl will be appointed by separate order. The clerk shall serve a copy of this

order by facsmile transmission on Maria E. Stratton, FPD., who will locate appointed csl. The dc shall provide this court with the name and address of appointed csl within 14 days of locating csl. The opening brief and excerpts of record are due 5/10/99; the answering brief is due 6/9/99; the optional reply brief is due within 14 days after service of the answering brief. [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (rei) [98-56455 98-80477 98-80582 98-80603]

1/22/99 Filed order (Robert R. BEEZER, Andrew J. KLEINFELD, Michael D. HAWKINS): The court con these matters to enable the court to conduct a complete review of the records. The court also grants the request for a COA to address the statute of limitations issue. As to the other issues raised by pet, the request for COA is dn without prejudice to renewal appellant is granted to leave to proceed IFP. The court also appoints csl for appellant. Csl will be appointed by facsmile transmision on Maria E. Stratton, FPD., who will locate appointed csl. The dc shall provide this court with the name and address of appointed csl within 14 days of locating csl. The opening brief and excerpts of record are due 5/10/99; the answering brief is due 6/9/99; the optional reply brief is due within 14 days after service of the answering brief. [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (rei) [98-56455 98-56587 98-80477 98-80582 98-80603]

2/10/99 Received copy of District Court order filed on 2/2/99 appoint Mary Ellen Lewis counsel of record. (Filed by Magistrate n) (cja vch no 0885350) [98-56455] (rei) [98-56455]

3/17/99 Received copy of District Court order filed on 3/10/99 appoint Lisa M. Bassis counsel of record. (Filed by Magistrate n) (CJA VCH NO. 0885362.) [98-56455] (rei) [98-56455]

9/23/99 Filed Appellant Richard Herman Ford's motion to

modify deadlines; declaration; served on 9/22/99. (TO MOATT PER PROMO [98-56455] (ca) [98-56455]

3/30/00 Filed order MOATT (Deputy Clerk: JT) It has recently come to the court's attention that, on 9/23/99, appellant moved to amend the briefing schedule for these appeals. Appellant's motion is GRANTED. Appellant's opening brief and excerpts of record are due 5/8/00; appellee's answering brief is due 6/7/00; and the optional reply brief is due within 14 days from service of the answering brief. The Clerk shall amend the docket for all of these appeals to reflect that Lisa M. Bassis, P.O. Box 691956, LA, CA 90069, (213)848-8733, is appt. counsel of record. [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

12/13/00 Referred to staff attorney (moatt) re: no response to default order [98-56587, 98-56455, 98-80477, 98-80582, 98-80603] (cb) [98-56455 98-56587 98-80477 98-80582 98-80603]

12/18/00 Received original and 15 copies of appellant's opening brief of 35 pages and 7 excerpts of record in 2 volumes; served on 12/15/00. (Informal: n) Deficient late and in default. Notified Counsel. [98-56455] (ca) [98-56455]

1/4/01 Filed Appellant Richard Herman Ford's motion for relief from default; served on 12/23/00. (MOATT) [98-56455] [98-56455] (ca) [98-56455]

2/26/01 Filed order MOATT (Appellate Commissioner) Appellant's "motion to compel filing of appellant's opening brief and excerpts of record nunc pro tunc" is construed as a motion for relief from default. So construed, the motion is granted. The clerk shall file the opening brief and excerpts of record received on 12/18/00. Appellee's brief is due within 30 days after the date of this order. Appellant's optional reply brief is due within 14 days after service of the appellee's

brief. [98-56455, 98-56587, 98-80477, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80603]

2/26/01 Filed original and 15 copies of Appellant Richard Herman Ford's opening brief in 98-56455 of 35 pages and 7 excerpts of record in 2 volumes; served on 12/15/00.(Informal: n) [98-56455, 98-56587, 98-80477, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80603]

3/30/01 Filed Appellee's motion to strike portions of Appellant's excerpts of record; served on 3/27/01. (MOATT) (ca) [98-56455]

3/30/01 Filed original and 15 copies of Appellee's answering brief of 40 pages; served on 3/27/01. [98-56455, 98-56587, 98-80477, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80603]

4/11/01 14 day oral extension by phone of time to file Appellant Richard Herman Ford in 98-56455, Appellant Richard Herman Ford in 98-56331, Appellant Richard Herman Ford in 98-56587, Petitioner Richard Herman Ford in 98-80477, Petitioner Richard Herman Ford in 98-80582, Petitioner Richard Herman Ford in 98-80603's reply brief. [98-56455, 98-56331, 98-56587, 98-80477, 98-80582, 98-80603] appellants' reply brief due 4/27/01 in 98-56455, in 98-56331, in 98-56587, in 98-80477, in 98-80582, in 98-80603; (terr) [98-56331 98-56455 98-56587 98-80477 98-80582 98-80603]

5/24/01 Filed original and 15 copies of Appellant Richard Herman Ford's reply brief of 26 pages; served on 5/23/01. (Informal: n) [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

5/24/01 Filed Appellant Richard Herman Ford's opposition to respondent's motion to strike portions of appellants excerpts of record; served on 5/23/01. (MOATT) [98-56455, 98-56587, 98-80477, 98-80582,

98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

5/24/01 Filed Appellant Richard Herman Ford's motion for relief and to accept appellant's brief; served on 5/23/01. (MOATT, brief already filed) [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

7/19/01 Filed order MOATT (Deputy Clerk: ML) Appellee's motion to strike portions of the excerpts of record is referred to the panel that will decide the merits of this appeal. Appellant's motion for relief is denied as unnecessary. This case is ready for calendering. [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

8/8/01 Calendar check performed [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (aw) [98-56455 98-56587 98-80477 98-80582 98-80603]

8/20/01 Calendar materials being prepared. [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (aw) [98-56455 98-56587 98-80477 98-80582 98-80603]

8/28/01 CALENDARED: PASA Nov 6 2001 9:00 am Courtroom 2 [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (aw) [98-56455 98-56587 98-80477 98-80582 98-80603]

10/9/01 FILED CERTIFIED RECORD ON APPEAL: 1 CLERKS REC (ORIG.) [98-56455] (jk) [98-56455]

10/25/01 Filed Respondent's additional citations; served on 10/23/01. (PANEL) [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

11/6/01 ARGUED AND SUBMITTED TO Harry PREGERSON, Stephen R. REINHARDT, Barry G. SILVERMAN [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (pg) [98-56455 98-56587 98-80477 98-80582 98-80603]

6/10/02 Filed order (Harry PREGERSON, Sidney R. THOMAS, Barry G. SILVERMAN) Submission of these cases is hereby vacated. The cases will be held pending the Supreme Court's decision in Saffold v. Newland, 250 F. 3d 1262 (9th Cir. 2000), cert. granted, 122 S. Ct. 393 (2001) (No.01-301). [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

7/3/02 Filed order (Harry PREGERSON, Stephen R. REINHARDT, Barry G. SILVERMAN): The ct directs the parties to file supplemental briefs on the following issues: (1) Whether the dc, when it dismissed Ford's first federal habeas petition, abused its discretion by failing to consider sua sponte whether to stay the proceedings and hold the exhausted claims in abeyance while Ford attempted to exhaust his unexhausted claims? (cite) (2) What, if any, obligation the dc had to inform Ford at the time that it dismissed his first federal habeas petition without prejudice that, under AEDPA, absent equitable tolling, he would be time-barred on all of his claims should he opt to return to the state courts to exhaust his unexhausted claims rather than choosing to proceed with the exhausted claims and dismiss the unexhausted claims? The supplemental briefs shall be no longer than 7000 words and shall be filed with the Clerk of the Court within 21 days of the date of this order. Copies shall also be delivered to the chambers of the panel judges on or before the filing date: (see casefile for judges addresses). [phone/file Faxed Panel] [98-56455, 98-56587, 98-80477, 98-80582] (je) [98-56455 98-56587 98-80477 98-80582]

7/22/02 Filed Lisa M. Bassis in 98-56455, in 98-56587, in 98-80477, in 98-80582, in 98-80603's CJA voucher and affidavit of Lisa M. Bassis in support of interim payment of attys fees and cost under CJA; served on 7/1/02. (commissioner) (dr) [98-56455 98-56587 98-80477 98-80582 98-80603]

7/23/02 Filed an original and 15 copies of Appellee Daniel E. Lungren's supplemental appellee's brief of 22 pages; served on 7/22/02. (PANEL via FEDEX) [98-56455] (ca) [98-56455]

7/30/02 Filed an original and 15 copies of Appellant Ford's supplemental brief of 19 pages; served on 7/19/02. (PANEL via fedex) [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

9/6/02 FILED OPINION: AFFIRMED IN PART, VACATED IN PART AND REMANDED WITH INSTRUCTIONS. (Terminated on the Merits after Oral Hearing; Remanded; Written, Signed, Published. Harry PREGERSON; Stephen R. REINHARDT, author; Barry G. SILVERMAN, dissenting.) FILED AND ENTERED JUDGMENT. [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

9/19/02 Filed an original and 50 copies of Appellee Daniel E. Lungren's petition for rehearing with suggestion for rehearing en banc of 23 pages; served on 9/18/02. (PANEL AND ALL ACTIVE JUDGES) [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

9/24/02 Filed order (Harry PREGERSON, Stephen R. REINHARDT, Barry G. SILVERMAN) Petitioner-Appellant shall file a response to Respondents-Appellee's petition for rehearing with suggestion for rehearing en banc. Fifty copies of said response shall be filed within 21 days of the filed date of this order. [98-56455, 98-56587, 98-80477,

98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

10/4/02 Filed Appellant Richard Herman Ford's motion to extend time in which to file response to respondent/appellee's petition for rehearing; served on 10/03/02. (PANEL) [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

10/7/02 Filed order (Harry PREGERSON, Stephen R. REINHARDT, Barry G. SILVERMAN) Petitioner-Appellant's motion to extend time until 11/11/02 to file response to respondent-Appellee's petition for rehearing is granted. (phoned parties, faxed panel) [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

10/25/02 Filed Daniel E. Lungren's additional citations, served on 10/23/02. (PANEL and all active judges) [98-56455, 98-56331, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56331 98-56455 98-56587 98-80477 98-80582 98-80603]

11/14/02 Received Appellant's response to appellee's petition for rehearing and suggestion for rehearing en banc; served on 11/11/02. Deficient: late, motion on its way from counsel. (PANEL AND ALL ACTIVE JUDGES) [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

11/29/02 Filed Appellant Richard Herman Ford's motion to file late court ordered response to respondent's petition for rehearing; served on 11/27/02. (PANEL) [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

12/3/02 Filed order (Harry PREGERSON, Stephen R. REINHARDT, Barry G. SILVERMAN) Appellant's

motion to extend time in which to file a response to appellee's petition for rehearing and suggestion for rehearing en banc is granted. [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

12/3/02 Filed Appellant Richard Herman Ford's response to appellee's petition for rehearing and suggestion for rehearing en banc of 11 pages; served on 11/11/02. [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

1/14/03 Filed order (Harry PREGERSON, Stephen R. REINHARDT, Barry G. SILVERMAN): The parties are directed to file supplemental briefs of no longer than fifteen (15) pages addressing the effect of Valerio v. Crawford, (cite) and Kelly v. Small, (cite) on this case. The briefs shall be filed within fourteen (14) days from the date of this order with the Clerk of the Ct and shall also be delivered to chambers of the panel judges on or before the filing date: Chambers of Judge Pregerson, Chambers of Judge Reinhardt, Chambers of Judge Silverman. [phone/file Faxed Panel and Csl of record] [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (je) [98-56455 98-56587 98-80477 98-80582 98-80603]

1/28/03 Filed original and 15 copies of respondent/Appellee's supplemental brief of 5 pages, served on 1/27/03. (PANEL via FEDEX) [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

2/3/03 Filed original and 15 copies of petitioner Fords' supplemental brief of 11 pages; served on 1/27/03. (PANEL via FEDEX) [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

5/15/03 Filed order and amended opinion (Judges Harry PREGERSON, Stephen R. REINHARDT, Barry G.

SILVERMAN,) (Orig. opinion id:) denying petition for enbanc rehearing [4535744-1] in 98-56455, 98-56587, 98-80477, 98-80582, 98-80603 [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

5/21/03 Filed respondent's motion for stay of mandate; served on 5/19/03. (PANEL) (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

5/28/03 Filed order (Harry PREGERSON, Stephen R. REINHARDT, Barry G. SILVERMAN) Resps-Aples' mtn for a 90-day stay of the issuance of the mandate pending application for writ of cert is granted. Therefore, it is ordered that the mandate is stayed for 90 days pending the resps-aples' potential filing of a petition for writ of cert in the SC. If such a petition is filed, & if the writ of cert is granted by the SC, the stay shall continue until final disposition by the SC. [4744163-1] [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ea) [98-56455 98-56587 98-80477 98-80582 98-80603]

8/21/03 Received Paul M. Roadarmel for Appellee Daniel E. Lungren in 98-56455 letter dated 8/19/03 re: petition for writ of cert. was filed on 8/11/03 in the supreme court, fyi, in response to the court granting stay of the mandate on 5/28/03. [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

9/8/03 Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 03-221. filed on 8/12/03. [98-56455, 98-56587, 98-80477, 98-80582, 98-80603] (ca) [98-56455 98-56587 98-80477 98-80582 98-80603]

Richard Herman Ford E-10539
Name
CSP-Sacramento A-3-224
P.O. Box 290066
Represa, CA 95671-0066
ADDRESS or PLACE of CONFINEMENT
and PRISON NUMBER

Note: It is your responsibility to notify the Clerk of Court in writing of any change.

Note: *If represented by an attorney, his name, address & Telephone number.*

FILED
CLERK U.S. DISTRICT COURT
MAY - 5 1997
CENTRAL DISTRICT
OF CALIFORNIA
BY CLERK

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

RICHARD HERMAN FORD
FULL NAME INCLUDE NAME UNDER WHICH YOU WERE CONVICTED

Petitioner,

vs.

S. HUBBARD, WARDEN (A) CSP-SAC
NAME OF WARDEN, SUPERINTENDENT JAILOR, or AUTHORIZED PERSON having custody of petitioner

Respondent.

and

ATTORNEY GENERAL OF THE STATE OF CALIFORNIA
Daniel Lungren
Additional Respondent.

CASE NO.CV97-3385RAP(SH)

To be supplied by the Clerk of the United States District Court

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

LODGED
CLERK, U.S. DISTRICT COURT
APR 25 1997
CENTRAL DISTRICT OF CALIFORNIA

(If petitioner is attacking a judgment which imposed a sentence to be served in the *future*, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the *future* under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.)

INSTRUCTIONS – READ CAREFULLY

This petition shall be legibly handwritten or typewritten, and signed by the petitioner, under penalty of perjury. You must forth CONCISELY the answer to each question in the proper space on the form. Any false statement of material may serve as the basis for prosecution and conviction for perjury.

You must not attach separate pages to this petition, except that *ONE* separate additional page is permitted in answering Question No. 10.

Upon receipt of a fee of $5.00 you petition will be filed if it is in proper order.

If you are seeking leave to proceed *in forma pauperis* (without paying the $5.00 filing fee and other court costs), then you must also execute the declaration on the last page, setting forth information which establishes your inability to pay the fees and costs of the proceedings or to give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your prison account exceeds $*25.00*, you must pay the filing fee as required by the rule of the district court.

When the petition is completed, the original and two copies must be mailed to the Clerk of the United States District Court for the Central District of California, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012. ATTN: Intake/Docket Section.

Only one sentence, conviction or parole matter may be challenged in a single petition. If you challenge more than one, you must do so by separate petitions.
Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

PLEASE COMPLETE THE FOLLOWING: (Check appropriate number)

This petition concerns:

1. __X__ A conviction.

2. _____ A Sentence.

3. _____ Jail or prison conditions.

4. _____ Prison discipline.

5. _____ A parole problem.

6. _____ Other.

PETITION

1. Place of detention California State Prison-Sacramento, Represa, California

2. Conviction on which the petition is based (a separate petition must be filed for each conviction being attacked).

a. Nature of offense involved (include all counts) Conspiracy to Commit Murder, Attempted Murder w/Firearm, Administering Stupefying Drugs, Robbery, Conspiracy to Commit Robbery w/Arming, Great Taking Enhancement, False Imprisonment, Assault with Firearm.

b. Penal or other code section or sections PC §§182/187, 664/187, 12022(A), 222, 211, 182/211, 12022.5, 12022.6, 236, 12022(A), 12055.5, 245(A)(2).

c. Name and location of sentencing court Los Angeles Superior Court - Central District, 111 N. Hill St., Los Angeles, CA 90012-3117

d. Case Number Superior Court No. A392422; Court of Appeal No. B033751.

e. Date of Conviction January 6, 1988

f. Date of Sentence March 11, 1988

g. Length of sentence on each count 25-Life + 11 Years

h. Plea (check one)
(1) Not guilty (x) (2) Guilty ( ) (3) Nolo Contendere ( )

i. Kind of trial (check one)
(1) Jury (x) (2) Judge alone ( ) (3) Judge alone on transcript ( )

j. Did you testify at trial? Yes (x) No ( )

3. Did you appeal from the conviction of sentence?
Yes (x) No ( )

4. If you did appeal, give the following information for each appeal

a. (1) Name of Court California Court of Appeal, 2nd Appellate District, Division 7
(2) Result Conviction Affirmed- Petition for Rehearing Denied.
(3) Date of result October 9, 1992
(4) Citation or number of opinion 10 Cal. App. 4th 20; B033751
(5) Grounds raised (list each)
(a) Trial court erred in quashing Subpoena Duces Tecum issued by defense concerning freelance writer who 10 hours of taped interview with chief prosecution witness about case.
(b) Defense was unconstitutionally burdened re: balancing test freelance writer interests pursuant to DELANY.
(c) Trial court erred in not allowing evidence that prosecutor committed misconduct for instructing police to cease interviewing pros. wit. (impeachment).
(d) Trial court erred in not allowing appellant to present extrinsic evidence of third-party culpability.
(e) Trial court's refusal to allow details of significant evidence for benefit of co-defendant, hampered petitioner's defense.
(f) Failure to allow evidence of specific acts of misconduct in order to impeach prosecution's prime witness's credibility was error.
(g) Appellant joined in all issues raised by co-

appellant in his opening brief and incorporated all arguments therein.

b. (1) Name of Court California Supreme Court
(2) Result Petition for Review - Denied
(3) Date of result January 14, 1993
(4) Citation or number of opinion Same
(5) Grounds raise (list each) Same
(a)
(b)
(c)
(d)
(e)
(f)
(g)

5. If you did not appeal:

a. State your reasons
b. Did you seek permission to file a late appeal? Yes( )
No ( )

6. Other than a direct appeal, have you previously filed any petitions, applications or motions with respect to the conviction in any court, state or federal? Yes ( ) No (x)

7. If your answer to 6 was *YES* give the following information.

a. (1) Name of court
(2) Nature of proceeding
(3) Grounds raised
(4) Result
(5) Date of result
(6) Citation or number of any written opinions or orders entered pursuant to each such disposition.

b. (1) Name of court
(2) Nature of proceedings
(3) Grounds raised
(4) Result

(5) Date of result
(6) Citation or number of any written opinions or orders entered pursuant to each such disposition.

c. (1) Name of court
(2) Nature of proceedings
(3) Grounds raised
(4) Result
(5) Date of result
(6) Citation or number of any written opinions or orders entered pursuant to each such disposition.

8. Was an evidentiary hearing held? Yes ( ) No ( )
If so, state the name of the court, and the result

9. If you answer to 6 was *NO*, explain briefly why you did not seek post-conviction relief in the state courts. Petitioner is seeking relief in state courts, but due to extraordinary length of trials (5½ years), including one full year of suppression motions, petitioner has been able to fully prepare all issues to be presented to the court. Petitioner how files this writ in haste to meet new statute of limitations on federal habeas relief deadline of 4-23-97.

CAUTION: *Exhaustion Requirement:* In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted as to some grounds, you must first present all other grounds to the state court.

10. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, attach a SINGLE page only behind this page.

CAUTION: If you fail to set forth all grounds in this petition, you may be barred from presenting additional ground at a later date.

a. Ground one Trial court errored in quashing Subpoena Duces Tecum issued by defense concerning freelance writer who had 10 hours of taped interview with chief prosecution witness about case.

Supporting *FACTS* (teil your story *BRIEFLY* without citing cases or law).

CAUTION: You must state facts not conclusions in support of your grounds. (e.g., if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do). A rule of thumb to follow is – who did exactly what to violate your rights at what time or place.

Freelance writer, Jan Golab, had ten hours of taped interviewed with People's chief witness, Bruce Adams. The court quashed Subpoena Duces Tecum to discover these recordings and denied petition the possibility of presenting evidence favorable to his claims at trial (i.e. that Bruce Adams was not credible witness). Petitioner was thus denied his right to a fair trial and to fully confront witnesses concerning relevant evidence to this case.

b. Ground Two Defense was constitutionally burdened re: balancing test of freelance writer's interests pursuant to DELANEY.

Supporting *FACTS* (tell you story *BRIEFLY* without citing cases or law).

Writer Golab stated his only interested in these tapes were pecuniary. Appellate attorney specigically stated in Appeal Brief, " . . . necessary to present it [in] order to preserve the issue for further review." (Appellant Ford's Opening Brief, page 40). Trial court disregarded Golab's pecuniary motives as irrevevant. Petitioner maintains position that his right to a fair trial is far paramount over a reporter's privilege, and the information would have assisted defense.

c. Ground Three Trial court errored in not allowing evidence that prosecutor committed misconduct for instructing police to cease interviewing prosecution witness (impeachment

Supporting *FACTS* (tell your story *BRIEFLY* without citing cases or law).

Deputy District Attorney, Robert Jorgensen, told police to stop taping their witness, as was usual policy for the police to do, because he did not want the information on tapes to come back to "haunt" him. Considering the facts of this case, and that the witness they were referring to was Bruce Adams, the district attorney was in essence deliberately suppressing possible exculpatory evidence from petitioner's defense, which he is mandated to do in accordance to petitioner's right to receiving a fair trial.

d. Ground Four Court errored in not allowing appellant to present extrinsic evidence of third-party culpability.

Supporting *FACTS* (tell your story *BRIEFLY* without citing cases or law).

The police concluded that from witness description, the persons responsible for the robbery petitioner was tried for, were done by the same suspects who had committed another robbery unrelated to petitioner's charge. These suspects were described as "possible Iranians or Middle Eastern" (with petitioner and co-defendant both being white). Trial court would not allow defense to present this to jury and violated petitioner's right to fair trial in so doing.

e. **Ground Five**: Trial court's refusal to allow details of significant evidence for benefit of co-defendant, hampered petitioner's defense.

Supporting FACTS: Trial court refused to allow

evidence of the details of petitioner's wife's rape. Trial court excluded tape recording of prosecution key witness, Adams, and victim Loguercio. Trial court elided all specific references to co-defendant, Von Villas. These three ruling by the trial court, when taken in context to the circumstance of the entire case, constituted an abuse of the discretion and precluded petitioner's right to a fair trial.

f. **Ground Six**: Failure to allow evidence of specific acts of misconduct in order to impeach prosecution's prime witness's credibility was error.

Supporting FACTS: After petitioner and co-defendant were arrested, prosecution's prime witness, Bruce Adams, became a "protected witness." During the time that Adams was protected witness, he was arrested for writing a check to himself under an alias on a defunct business account. Adams was released from jail to the custody of a police detective named Gaily. No charges were filed. These event occurred in Orange County which is significant because it was Los Angeles County police that pulled him out of jail. Later, Adams was arrested in Oxnard, which is in Ventura County, for auto theft and embezzlement, and again Los Angeles police (Sergeant Fox), retrieved him from jail there, and no charges were file. Petitioner was not allowed to give jury full measure of this information which would tend to impeach government's key witness, but also to suggest police credibility was in question. This ruling was erroneous to a constitutional magnitude when taken with all other evidentiary rulings made against petitioner, and resulted in petitioner being deprived a fair trial.

g. **Ground Seven:** Appellant joined in all issues raised by co-defendant in his opening brief and incorporated all argument therein.

Supporting FACTS: Petitioner is entitled to bring all viable federal issues that have been exhausted in State

court that were raised by co-defendant who had trial in front of a single jury. Those issues are:

1. Jury misconduct re: Jury foreman producing his own "spread sheet," and had used by entire jury.
2. Appellate review denied petitioner of fair trial for failing to supress general warrant so lacking in specificity and particularity, it violated rights guaranteed under fourth & fourteenth amendments.
3. Due process rights were denied by State's failure to preserve potentially favorable evidence.
4. Trial court prejudicially refused defense instructions re: Inferences to be drawn against People for loss of evidence seized pursuant to warrant.
5. Trial court erroneously refused to instruct that the jury had to be unanimous on each overt act of each conspiracy.

11. If any of the grounds listed in 10 were not previously presented to this court or any other court, state briefly which grounds were not so presented and give reasons. N/A

12. Do you have any petition, appeal or parole matter pending in any court, either state or federal as to the judgment of conviction under attack? Yes ( ) No (x)

13. Are you presently represented by counsel? Yes ( ) No (x)
If so, name, address and telephone number _____
Case name and court _____

THEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceedings.

_____
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury

that the foregoing is true and correct. Executed on
April 19 1997
(Date)

/s/
Signature of Petitioner

[THIS PAGE INTENTIONALLY LEFT BLANK]

Richard Herman Ford E-10539
CSP-Sacramento A-3-224
P.O. Box 290066
Represa, cA 95671-0066

In Propria Persona

FILED
CLERK, U.S. DISTRICT COURT
MAY - 5 1997
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD HERMAN FORD,	)	Case No. 97-3385RAP(SH)
Petitioner,	)	MOTION TO STAY
vs.	)	FEDERAL HABEAS
	)	CORPUS PETITION
SUSAN HUBBARD, Warden (A)	)	CONTAINING
	)	EXHAUSTED GROUNDS
	)	WHILE PETITIONER
Respondent.	)	EXHAUSTS
	)	UNEXHAUSTED STATE
	)	CLAIMS ON STATE
		APPELLATE NO B033751

Petitioner, having duly filed a petition for Writ of Habeas Corpus in the above-entitled action pursuant to 28 U.S.C. § 2254, moves this court to stay said petition pursuant to Fetterly v. Paskett (9th Cir. 1993) 997 F.2d 1295, until petitioner can exhaust newly identified claims in state court and thereafter allow petitioner to amend said habeas petition.

Newly identified claims support, and are crucial to, federal petition. Unexhausted claims consist of:

1. Ineffective assistance of trial counsel. Counsel failed

to request exculpatory scientific test available to him.

2. Ineffective assistance of appellate counsel. Failed to bring above issue listed in 1.

3. Prosecutorial misconduct. Prosecution used informant/agent, Anthony Love, in constituionally unacceptable manner.

Petitioner advises court that due to haste to meet deadline imposed by Public Law 104-132-APR. 24, 1996, several additional meritorious issues beyond what has been stated in this motion may exist.

Petitioner also submits Declaration In Support of Motion to Stay Federal Writ, attached.

Dated: April 19 1997

/s/
RICHARD HERMAN FORD,
Petitioner In Propria Persona

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY FIRST CLASS MAIL, POSTAGE PREPAID, TO ALL COUNSEL(OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF RECORD IN THIS ACTION ON THIS DATE.
DATED 7-8-97
/s/
Deputy Clerk

FILED
CLERK, U.S. DISTRICT COURT
JUL - 7 1997
CENTRAL DISTRICT OF CALIFORNIA
BY /S/ DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA-
WESTERN DIVISION

RICHARD HERMAN FORD,	)	CV 97-3385-RAP(SH)
Petitioner,	)	ORDER RE FURTHER PROCEEDINGS ON A PARTIALLY EXHAUSTED PETITION
v.	)	
S. HUBBARD, WARDEN,	)	
Respondent.	)	

On May 5, 1997, petitioner, a prisoner in state custody, filed a Petition for Writ of Habeas Corpus (the "Petition") and a Motion to Stay Federal Habeas Corpus Petition Containing Exhausted Ground While Petitioner Exhausts Unexhausted State Claim on State Appellate No. B033751 (the "Motion"). Respondent filed an Answer on June 4, 1997, and then an Amended Answer on June 12, 1997, which addressed the merits of petitioner's Motion. The Court finds that petitioner has failed to exhaust Grounds 4 and 7 (subparts 1-4, inclusive) of the Petition.

A prerequisite to obtaining federal habeas corpus relief is the exhaustion of available state judicial remedies. 28 U.S.C. § 2254(b); Picard v. Connor, 404 U.S. 270, 275 (1971). "For reasons of federalism, 28 U.S.C. § 2254 requires federal courts to give the states an initial opportunity to correct alleged violations of its prisoners' federal rights." Duncan v. Henry, __ U.S. __, 130 L.Ed 2d 865, 868 (1995). Moreover, a federal court will not review a state prisoner's petition for writ of habeas corpus unless it appears that the prisoner has exhausted available state remedies on each and every claim presented. 28 U.S.C. § 2254(b), (c); Rose v. Lundy, 445 U.S. 509, 522 (1982).

A petitioner has satisfied the exhaustion requirement if: (1) he has "fairly presented" his federal claim to the highest state court with jurisdiction to consider it, Anderson v. Harless, 459 U.S. 4, 6 (1982); Picard, 404 U.S. at 275; or (2) he demonstrates that no state remedy remains available. Harmon v. Ryan, 959 F.2d 1457, 1460 (9th Cir. 1992); Kellotat v. Cupp, 719 F.2d 1027, 1029 (9th Cir. 1983); see 28 U.S.C. § 2254(c). In order to "fairly present", a prisoner must describe in the state court proceedings both the operative facts and the precise federal legal theory on which his claim is based. Duncan, 130 L.Ed 2d at 868; Anderson, 459 U.S. at 6.

The claims in federal court must be more than just "essentially the same." Johnson v. Zenon, 88 F.3d 828, 830 (1996).

Petitioner has three options:

1. The present Petition may be dismissed and Petitioner can present the issues framed in Grounds 4 and 7 (subparts 1-4, inclusive) of the Petition, to the California Supreme Court by way of habeas corpus. If relief is denied, a new Petition may be filed with this Court containing only issues that have been fully exhausted.

2. Petitioner can request that this Court now rule on all contentions except Grounds 4 and 7 (subparts 1-4, inclusive) of the Petition. If this Court rules on all of the grounds except 4 and 7 (subparts 1-4, inclusive), it will not later rule on these issues, even if Petitioner subsequently does exhaust these issues in review by the California Supreme Court. It is a matter of judicial economy to attempt to avoid piecemeal decisions.

3. Petitioner may establish, in his response to this Order, that he has in fact exhausted those issues in Grounds 4 and 7 (subparts 1-4, inclusive) of the Petition.

Petitioner shall file and serve within 18 days of the date of this Order a statement that petitioner either: (1) forever waives his right to assert Grounds 4 and 7 (subparts 1-4, inclusive), in the present habeas petition; or (2) establishes that these Grounds have been exhausted by habeas corpus review in the California Supreme Court.

If no written response is received, as set forth above, the Magistrate Judge will assume that Petitioner agrees to dismissal of the entire petition without prejudice and wishes to exhaust Grounds 4 and 7 (subparts 1-4, inclusive) before obtaining a ruling from this Court. If Petitioner elects to waive the contentions set forth in Grounds 4 and 7 (subparts 1-4, inclusive) or if petitioner can adequately demonstrate exhaustion of these issues the Court will then order a Return from Respondent on the merits.[1/]

Furthermore, a district court has discretion to Stay proceedings on a habeas petition containing only exhausted claims, in order to give Petitioner time to exhaust newly

---

1. This Court has received respondent's application for an extension of time to file its Return, filed on July 3, 1997. This Court will advise respondent at a later date if a Return on the merits becomes necessary in light of this Order.

discovered claims in state court before amending the federal habeas petition. Greenawalt v. Stewart, 105 F.3d 1268, 1274 (9th Cir. 1997) (per curiam), citing Fetterly v. Paskett, 997 F.2d 1295, 1301-02 (9th Cir. 1993), cert. denied, 513 U.S. 914 (1994); see also Calderon v. U.S. District Court (Gordon), 107 F.3d 756, 761 n.10 (9th Cir. 1997) (as amended per Order, April 16, 1997, 1997 WL 183877).

However, a federal habeas petition must be dismissed if it contains even one unexhausted claim. See Coleman v. Thompson, 501 U.S. 722, 731, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991); Castile v. Peoples, 489 U.S. 346, 349, 109 S.Ct. 1056, 103 L.Ed. 380 (1989); Rose v. Lundy, 455 U.S. 509, 522, 102 S.Ct. 1198, 71 L.Ed.2d 379 (1982).

In this case, the Petition contains both exhausted and unexhausted claims. As a result, this Court does not have the discretion to Stay such a petition.

It appears that petitioner moves for a Stay of proceedings based on the apprehension that otherwise he may be barred from filing a new federal habeas petition by the one-year statute of limitations imposed by 28 U.S.C. § 2244(d), as amended by Title 1, § 101 of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA" or "the Act"), Pub. L. 104-132, 110 Stat. 1214 (enacted April 24, 1996).

However, as respondent correctly notes, with respect to petitioner's new claims, the one-year statute of limitations period under the AEDPA begins to run only when the factual predicate of the claims could have been discovered through the exercise of due diligence. 28 U.S.C. § 2244 (d)(1)(D).

DATED: 7/7/97

/s/
STEPHEN J. HILLMAN
UNITED STATES MAGISTRATE JUDGE

R.H. FORD/E-10539
CSP/Sac. A-Facility
Box-290066
REPRESSA, Ca. 95671-0066

In Propria Persona

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA-
WESTERN DIVISION

R.H. FORD,
Petitioner,

Vs.

S. HUBBARD, WARDEN
Respondent
_____/

CV-97-3385-RAP-(SH)

RETURN TO COURT
ORDER Re.: FURTHER
PROCEEDINGS

And MOTION FOR
EXTENTION OF TIME

PETITIONER of the foregoing action hereby makes this RETURN to the District Court's Order, Re.: FURTHER PROCEEDINGS ON A PARTIALLY EXHAUSTED PETITION:

PETITIONER makes this instant RETURN to this District Court's ORDER and to give notice [of his intent to forego further proceeding in order to exhaust at issue elements of petition] and inquire [whether in agreeing to dismissal of petition WITHOUT PREJUDICE that the RETURN filed by RESPONDENT will be "accepted as true pursuant to 28 U.S.C. § 2248" as stated in this Court's ORDER, dated 5/12/97?] and to request an extention of time to respond to said RETURN in

the event that this Court's subsequent ORDER is not controlling.

Dated this 24 Day of July, 1997

/s/
R.H. FORD/ Pro Se

R.H. FORD /E-10539
CSP/Sac. A-Facility
Box-290066
Represa, Ca. 95671-0066

In Propria Persona

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA-
WESTERN DIVISION

R.H. FORD,
PETITIONER

Case No. CV-97-3385-RAP-(SH)

TRAVERSE TO RETURN

Vs

S. HUBBARD,
RESPONDENT

/

PETITIONER of the above titled action hereby makes this TRAVERSE to the RESPONDENT's RETURN on ORDER of this United States District Court and alleges the following:

1. That he is so detained at California State Prison/Sac. Co.;

2. That above said detension is the result of a judgement by a California Superior Court [case No. #A-392422] for the County of Los Angeles.

3. That said detension is not lawful nor proper due to numerous violations of Penal Code; Procedural Statutes;

State and Federal Constitution.

4. PETITIONER admits possible failure to exhaust several issues as a result of ineffective assistance of counsel and incomplete transcripts.

5. PETITIONER is of the belief that had he been accorded full scope of 'Rights' [from Cal. P.C. 1096], protections, Due Process and Effective Assistance of [state appointed] Counsel he would be ". . entitled to discharge from his present [duration of] confinment." That his present sentence and confinment is illegal and in violation the State and Federal Constitutions.

Accordingly, it is the PETITIONER's hope and request that any relief to which he may be entitled shall be granted by this District Court.

Dated this 24 Day of July , 1997 /s/
R.H. FORD/ Pro Se

VERIFICATION

I, PETITIONER, R.H. FORD, DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT EXCEPT AS TO THOSE MATTERS ALLEGED UPON INFORMATION AND BELIEF. AS TO THOSE MATTERS ALLEGED UPON INFORMATION AND BELIEF I BELIEVE THEM TO BE TRUE AND CORRECT. EXECUTED THIS ___ DAY OF JULY '97

/s/
R.H. FORD IN PROPRIA PERSONA

RICHARD HERMAN FORD/E-10539
Name
CSP/Sac. A-3-224
P.O. Box 290066
Represa, CA 95671-0066
ADDRESS or PLACE OF CONFINEMENT
and PRISON NUMBER

Note: It is your responsibility to notify the Clerk of Court in writing of any change.

Note: *If represented by an attorney, his name, address & Telephone number.*

FILED
CLERK U.S.
DISTRICT COURT
MAY - 5 1997
CENTRAL DISTRICT OF
CALIFORNIA
BY CLERK

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

RICHARD HERMAN FORD
FULL NAME INCLUDE NAME UNDER WHICH YOU WERE CONVICTED

Petitioner,

vs.

S. HUBBARD, Warden
(A) CSP-SAC
NAME OF WARDEN, SUPERINTENDENT JAILOR, or AUTHORIZED PERSON having custody of petitioner

Respondent.

and

ATTORNEY GENERAL OF THE STATE OF CALIFORNIA
Daniel Lungren
Additional Respondent.

CASE NO.CV97-3386JMI(SH)

To be supplied by the Clerk of the United States District Court

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

LODGED
CLERK, U.S. DISTRICT COURT
APR - 25 1997
CENTRAL DISTRICT OF CALIFORNIA

(If petitioner is attacking a judgment which imposed a sentence to be served in the *future*, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the *future* under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.)

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You must not attach separate pages to this petition, except that *ONE* separate additional page is permitted in answering Question No. 10.

Upon receipt of a fee of $5.00 you petition will be filed if it is in proper order.

If you are seeking leave to proceed *in forma pauperis* (without paying the $5.00 filing fee and other court costs), then you must also execute the declaration on the last page, setting forth information which establishes your inability to pay the fees and costs of the proceedings or to give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your prison account exceeds $*25.00*, you must pay the filing fee as required by the rule of the district court.

When the petition is completed, the original and two copies must be mailed to the Clerk of the United States District Court for the Central District of California, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012. ATTN: Intake/Docket Section.

Only one sentence, conviction or parole matter may be challenged in a single petition. If you challenge more than one, you must do so by separate petitions.
Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

PLEASE COMPLETE THE FOLLOWING: (Check appropriate number)

This petition concerns:

1. __X__ A conviction.

2. _____ A Sentence.

3. _____ Jail or prison conditions.

4. _____ Prison discipline.

5. _____ A parole problem.

6. _____ Other.

PETITION

1. Place of detention CALIFORNIA STATE PRISON-SACRAMENTO, Represa, CA

2. Conviction on which the petition is based (a separate petition must be filed for each conviction being attacked).

a. Nature of offense involved (include all counts) Conspiracy To Murder; Murder; Special Circumstance of Murder for Financial Gain.

b. Penal or other code section or sections PC §§182, 187, & 190.2(a)(1)

c. Name and location of sentencing court Los Angeles Superior Court, Northeast District - Van Nuys, 6230 Sylmar Avenue, Van Nuys, CA 91401.

d. Case Number Los Angeles No. A399663; Court of Appeal No. B041110

e. Date of Conviction October 11, 1988

f. Date of Sentence February 23, 1989

g. Length of sentence on each count 25-Life [Stayed (PC §182)]; Life Without Possibility of Parole [PC §§187, 190.2(a)(1)].

h. Plea (check one)
(1) Not guilty (x) (2) Guilty ( ) (3) Nolo Contendere ( )

i. Kind of trial (check one)
(1) Jury (x) (2) Judge alone ( ) (3) Judge alone on transcript ( )

j. Did you testify at trial? Yes (x) No ( )

3. Did you appeal from the conviction of sentence?
Yes (x) No ( )

4. If you did appeal, give the following information for each appeal

a. (1) Name of Court California Court of Appeal, 2nd Appellate District, Division 7
(2) Result Conviction Affirmed- Petition for Rehearing Denied.
(3) Date of result November 16, 1992
(4) Citation or number of opinion B041110
(5) Grounds raised (list each)
(a) Tape recording used in evidence was in violation of Constitutionally cognizable expectation of privacy.
(b) Seizure of recording exceeded scope of warrent.
(c) Warrent for tape recording obtained in violation of Title III, Omnibus Crime Act, 18 U.S.C. 2510 et seq.
(d) Tape recording was used in violation of protected marital privilege
(e) Subsequent judge changed original judge's ruling on PC §995 (People's "judge shopping") constituted abuse of discretion and fourteenth amend. violation
(f) Inaccurate ruling regarding "overt acts" among conspirators was misstatement of

law and amounted to abuse of judicial discretion.
(g) Abuse of discretion for refusal of juror instruction regarding unanimous ageement on specific overt act.
(h) Abuse of discretion by court in refusing impeachment of People's witness regarding felony conviction and hatred of LAPD where petitioner was employed.
(i) Abuse of discretion in allowing prejudicially misleading photograph into evidence.
(j) Instruction on motive was unsupported by the evidence and was prejudicially misleading.
(k) Instruction on admissions was ambiguous as worded and should not have been given.

b. (1) Name of Court California Supreme Court
(2) Result Petition for Review - Denied
(3) Date of result February 11, 1993
(4) Citation or number of opinion Same
(5) Grounds raise (list each) Same
(a)
(b)
(c)
(d)
(e)
(f)
(g)

5. If you did not appeal:

a. State your reasons
b. Did you seek permission to file a late appeal? Yes( )

No ( )

6. Other than a direct appeal, have you previously filed any petitions, applications or motions with respect to the conviction in any court, state or federal? Yes ( ) No (x)

7. If your answer to 6 was *YES* give the following information.

a. (1) Name of court
(2) Nature of proceeding
(3) Grounds raised
(4) Result
(5) Date of result
(6) Citation or number of any written opinions or orders entered pursuant to each such disposition.

b. (1) Name of court
(2) Nature of proceedings
(3) Grounds raised
(4) Result
(5) Date of result
(6) Citation or number of any written opinions or orders entered pursuant to each such disposition.

c. (1) Name of court
(2) Nature of proceedings
(3) Grounds raised
(4) Result
(5) Date of result
(6) Citation or number of any written opinions or orders entered pursuant to each such disposition.

8. Was an evidentiary hearing held? Yes ( ) No ( )
If so, state the name of the court, and the result

9. If your answer to 6 was *NO*, explain briefly why you did not seek post-conviction relief in the state courts. Due to

extraordinary length of trial [5½ years), petitioner's case involves approximately 252 volumes of transcripts and other documents (over 50,00 pages). The majority of these have not yet been forwarded to petitioner by appellate attorney. Petitioner has limited resources to investigate all pertinent issues and grounds, including new evidence in an already complex case, but continues to remain diligent in pursuing relief. Petitioner is allowed only one box of legal material in cell at a time, thus creating situation where work on case is extremely time consumming. Petitioner now files this writ in haste due to new time limits on federal habeas relief imposed by Public Law 104-132, of which grace period to file expires April 23, 1997.

CAUTION: *Exhaustion Requirement:* In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted as to some grounds, you must first present all other grounds to the state court.

10. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, attach a SINGLE page only behind this page.

CAUTION: If you fail to set forth all grounds in this petition, you may be barred from presenting additional ground at a later date.

a. Ground one Tape recording used in evidence was in violation of constitutionally cognizable expectation of privacy.

Supporting *FACTS* (tell your story *BRIEFLY* without citing cases or law).

CAUTION: You must state facts not conclusions in support of your grounds. (e.g., if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do). A rule of thumb to follow is – who did exactly what to violate your rights at what time or place.

Tape recording of petitioner's visit with wife at jail was incomplete. It contained numerous gaps, and bits of phrases, taken and used out of context by prosecutors at trial. Conversation contained no mention of wrongdoing, which would have been plain had it been properly recorded. Petitioner had private conversation with wife, then State in essence created their own editing by claiming tape recorded only bits and pieces.

b. Ground Two Seizure exceeded scope of warrent.

Supporting *FACTS* (tell your story *BRIEFLY* without citing cases or law).

Warrant used for obtaining tape recording of jail visit of petitioner with wife referred to "future plans" of criminal activity. It made no authorization of seizure of information regarding past criminal conduct. Police and prosecutors used items designated on warrant as pretext for jailhouse recording which exceeded scope of warrant and violated petitioner's fourth amendment rights.

c. Ground Three Warrant for tape recording obtained in violation of Title III Omnibus Crime Act, 18 U.S.C.

§2510 et seq.

Supporting *FACTS* (tell your story *BRIEFLY* without citing cases or law).

Police did not adhere to federal mandates for electronic eavesdropping. Police failed to satisfy federal requirements regarding time limits, proper filing of supportive affidavit, and probable cause in obtaining, and subsequently using recording against petitioner at trial.

d. Ground Four Tape recording was used in violation of protected marital privilege.

Supporting *FACTS* (tell your story *BRIEFLY* without citing cases or law).

Tape recording at issue was between husband and wife, and, as such, is privileged and used against petitioner in violation of constitutional right to confidential communication. Petitioner recognizes that there are circumstances where confidentiality rights are outweighed by state's interests to protect citizens from harm, but given the specific issues of this recording, this was not the case.

e. **Ground Five:** Subsequent judge changed original judge's ruling on PC §995 motion (People's "judge shopping") constitutes abuse of discretion and fourteenth amendment violation.

Supporting FACTS: Two days after the People received adverse ruling on PC §995 motion, they exercised peremptory challenge (CCP §170.6) against judge who made ruling. Peremptory challenge was sustained. People then got subsequent judge to reverse first judge's ruling in violation of

petitioner's due process rights guaranteed under the fourteenth amendment.

f. **Ground Six**: Inaccurate ruling regarding "overt acts" among conspirators was misstatement of law and amounted to abuse of judicial discretion.

Supporting FACTS: The "overt acts" alleged by prosecution were not, by definition, overt acts at all, but rather "evidence" constituting a good portion of the prosecution's case. Trial court ruling constituted substantive abuse of conspiracy pleading serious enough to meet violation of due process standard.

g. **Ground Seven:** Abuse of discretion for refusal of juror instruction regarding unanimous agreement on specific overt act.

Supporting FACTS: Trial court ruled against defense request that jurors be instructed they must unanimously agree on the specific overt act that had been committed. After trial court rejected defense's request for such an instruction, court then instructed expressly on the converse principle resulting in error of magnitude requiring reversal of at least the conspiracy conviction.

h. **Ground Eight:** Abuse of discretion by court in refusing impeachment of People's witness regarding felony conviction and hatred of LAPD where petitioner was employed.

Supporting FACTS: People's witness, Darlis Chefalo, allegedly had a child raped by LAPD officiers, and a series of arrests for offenses including burgary, heroin, assault with a deadly weapon, and aggravated assault which occurred between

1959 and 1977 (with the events she testified to having occurred in 1982). Court ruled against allowing the underlying reasons for her hatred of the LAPD, and in so doing violated petitioner's right under sixth amendment right of confrontation, given the circumstances of this case.

i. **Ground Nine:** Abuse of discretion in allowing prejudicially misleading photograph into evidence.

Supporting FACTS: A newspaper photograph was found in desk of prosecution's prime witness that showed petitioner and co-defendant huddled together in conference that had been taken in a courtroom on an unrelated charge. This photograph was shown to the jury, and in the context of this particular case, it evinced an aura of conspiracy, which was what the prosecutor was attempting to prove against petitioner. This photograph was prejudicially misleading and violated petitioner's right to a fair trial.

j. **Ground Ten:** Instruction on motive was unsupported by the evidence and was prejudicially misleading.

Supporting FACTS: Court instructed jury with CALJIC No. 2.51, dealing with motive. There was no specific evidence presented from prosecutor that petitioner had a specific motive collateral to that inherent in the allegation of murder for financial gain, which would be universally applicable to anyone so charged. Therefore, instruction was unjustified and prejudicially misleading to petitioner's jury to the extent constituting reversible error.

k. **Ground Eleven**: Instruction on admissions was ambiguous as worded and should not have been given.

Supporting FACTS: Trial court instructed jury with slightly modified CALJIC No. 2.71, concerning admissions made by petitioner on jailhouse tape. The wording of this instruction suggested to the jurors that their only function was to determine whether or not statements constituting admissions were in fact said by petitioner. The fact that it was petitioner's voice on tape recording was not in controversy, and instruction served to obscure juror's function of determining whether statements concededly made by petitioner actually constituted "admissions"

l. **Ground Twelve**: All applicable issues raised by co-defendant.

11. If any of the grounds listed in 10 were not previously presented to this court or any other court, state briefly which grounds were not so presented and give your reasons. N/A

12. Do you have any petition, appeal or parole matter pending in any court, either state or federal as to the judgment of conviction under attack? Yes ( ) No (x)

13. Are you presently represented by counsel? Yes ( ) No(x)

    If so, name, address and telephone number _____

    Case name and court _____

WHEREFORE, petitioner prays, that the court grant petitioner

relief to which he may be entitled in this proceeding.

_____
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on
April. 19. 1997
(Date)

/s/_____
Signature of Petitioner

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Richard Herman Ford E-10539
CSP-Sacramento A-3-224
P.O. Box 290066
Represa, CA 95671-0066

FILED
CLERK, U.S. DISTRICT COURT

MAY - 5 1997

CENTRAL DISTRICT OF CALIFORNIA

BY DEPUTY

In Propria Persona

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD HERMAN FORD,	)	Case No. 97-3386-JMI
Petitioner,	)	MOTION TO STAY FEDERAL HABEAS CORPUS PETITION CONTAINING EXHAUSTED GROUNDS WHILE PETITIONER EXHAUSTS UNEXHAUSTED CLAIMS ON STATE APPELLATE NO. B041110
VS	)	
SUSAN HUBBARD, Warden, (A)	)	
Respondent.	)	

Petitioner, having duly filed a petition for Writ of Habeas Corpus in the above-entitled action pursuant to 28 USC §2254, moves this court to stay said petition pursuant to Fetterly v. Paskett (9th Cir. 1993) 997 F.2d 1295, until petitioner can exhaust newly identified claims in state court and thereafter allow petitioner to amend said habeas petition.

Newly identified claims support, and are crucial to, federal petition. Unexhausted claims consist of:

1. Discovery, subsequent to trial, that prosecution's motion main witness, Jan Ogilvie, was heavily drugged throughout trial and testimony against petitioner.

2. Discovery, subsequent to trial, that Ogilvie has recanted incriminating testimony against petition, and has stated that she never would have testified the way she did had she not bee "forcibly medicated" to the point of not being able to make coherent decisions.

3. Ineffective assistance of appellate counsel for failing to exhaust all viable issues in the record. Specifically, petitioner's constitutional rights were violated by the manner and use of known "agent," Anthony Love. There is evidence to indicate that informant Love was actually fed information about petitioner by police, who then altered Love's jail custody so that he could be, and was, place near to petitioner, and then directed by police to regurgitate previously fed information back at trial during testimony against petition as if it was information given to Love by petitioner.

Petitioner advises court that due to haste to meet the April 23, 1997, statute of limitations deadline for federal habeas corpus petitions, petitioner may have missed additional issues beyond what is mentioned in this motion.

Petitioner also submits Declaration In Support of Motion to Stay Federal Writ, attached.

DATED: APRIL 19 1997

/s/
RICHARD HERMAN FORD, Petitioner
In Propria Persona

R.H. Ford/E-10539
CSP/Sac. A-Facility
Box - 290066
Repressa, Ca. 95671-0066

In Propria Persona

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA-

WESTERN DIVISION

R.H. FORD,	CV-97-3386-RAP-(SH)
PETITIONER	PETITIONER's RETURN TO RESPONDENT's ANSWER
Vs.	
S. HUBBARD, WARDEN	
RESPONDENT. /	

PETITIONER of the foregoing action hereby makes this RETURN to the RESPONDENT's ANSWER pursuant to an ORDER of this United States District Court.

Petitioner would first direct this Court's attention to Respondent's ANSWER and its MEMORANDUM OF POINTS AND AUTHORITIES: PETITIONER does not concede that the ". . MOTION is being filed. . in an attempt to avoid the statute of limitations imposed by 28 USC § 2244(D)." PETITIONER submitted the MOTION pursuant to 28 USC § 2254 et seq. and belief that California Penal Code, Section 1473

(b) et seq. is the correct course and procedure.

In accordance with above said statutes, the "newly identified" claims are derivative of newly discovered evidence which PETITIONER has attempted to develop [See EXHIBITS - A etc.] prior to exhaustion of said claims which he is now seeking a fair hearing [SEE EXHIBIT – B]. As of this date, in the vacuume of each appointed appellate functionary, he has been unable to secure affidavits which he believes is prerequisite to any real consideration of his allegations of newly discovered evidence and violation of his state and Federal Constitutional rights that he now seeks relief from.

Additionally, PETITIONER is of the belief – and has been so advised – that no such petition of like complexity could receive an adequate and fair hearing unless it is considered in toto. Unfortunately, the PETITIONER's present circumstance almost precludes comportment with respect to litigious skills or practical experience in state or Federal venues. Furthermore, however it may be that the PETITIONER is neither a "Terrorist" nor under threat of death penalty, he would have brought the entire matter to this Federal District Court in due course. . . but for the enactment of the "AEDPA", which he was led to believe would bar him from any further Habeas Corpus relief if he did not submit the at issue petition now.

PETITIONER does concede that his petitions are indeed 'mixed' – although not by his choice nor as a result of lack of due diligence – but this is the result of a lack of consistant, qualitative/qualified legal counsel and representation that he has thus far been unable to satisfactorily secure himself. He likewise concurs with the Deputy Attorney General's observation with respect to 28 USC § 2244(d)(1)(D) and its application to PETITIONER's allegation of "newly identified" claims except that in the matter of the instant petition, numbered CV 97-3386, it would be considered sans a critical element . . : specifically that the former spouse – who was the sole witness

to allege that the PETITIONER had discussed [i.e. "overt acts"] and agreed to cause the disappearence or murder – of the alleged [no corpus deliciti; no 'crime scene' or evidence of "murder" was proven] victim [for money]. . . .now says [after years of detoxification, if not soul-searching] that (1) no such "discussion" ever occurred; (2) that no money was ever paid to the PETITIONER; and (3) that agents of the Los Angeles County, district attorney, (a) held her in proximate incommunicado; (b) whereat she was forced to submit to involuntary 'medication' with psychotropic drugs; (c) physically abused; and (d) coerced [under threat of "Death Penalty"] to plead to a reduced degree of murder [as well as implicating the PETITIONER in a conspiratorial relationship and an alleged contractural agreement to committ murder for money] as a precondition for exemption from 'special circumstances'. [see EXHIBIT-B]

The PETITIONER has always maintained that the conviction for which he is presently suffering resulted from 'guilt by association and circumstantial evidence which was utilized by informants to obscure their responsibility and/or mitigate criminal activity [by cooperating with politically motivated district officials]. This is not a matter of conjecture, but rather – only in the absence of fundamental [equal] protections (e.g. Cal. Penal Code, Sec. 1096), due process of law and effective assistance of counsel – a matter of fact which will become evident upon actual inquiry or examination of evidence – and lack thereof . . .

In any case, it is not the PETITIONER's intent to bother this Court with litany of excuses or rationalize his exemption from a reasonable and Constitutionally just statute of limitations. But, since the 'newly discovered evidence' falls within subsections of both state and Federal statutes, he believes – and will attempt to establish by litigation [in accordance with Constitutional provisions, Article-I, Sec. 9 Subpara. (3)] or exhaustion – that he is to return to this jurisdiction. Indeed, in

spite of the potential cause for prejudice, to some extent this seems to be the intent of this Court by its "GENERAL ORDER" transfering CV-97-3386-JMI to the calendar of Judge R.A. Paez, in combination with CV-97-3385-RAP-(SH) . . .

Accordingly, it is the PETITIONER'S belief that the less troublesome and equitable course would be for this District Court to STAY the proceedings, pending the resolution of the exhibited state petition for writ of habeas corpus [within the meaning of 28 USC § 2244(d)(1)(D)] – which the state [deputy] attorney general has now been served . . . In the alternative, PETITIONER requests that this petition be summarily 'DISMISSED WITHOUT PREJUDICE' – in which case, all parties having been notified and served shall return in due course – unless, in doing so, he will be procedurally barred . . . . In which case he has no choice but to proceed. . .

PETITIONER of the foregoing cause of action hereby declares under penalty of perjury that the foregoing is true and correct based upon his information or belief.

DATED THIS 10 DAY OF July, 1997

/s/
R.H. FORD
PRO SE

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY FIRST CLASS MAIL, POSTAGE PREPAID, TO ALL COUNSEL (OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF RECORD IN THIS ACTION ON THIS DATE
DATED: 8-4-97
/s/
DEPUTY CLERK

FILED
CLERK, U.S. DISTRICT COURT
AUG – 4 1997
CLERK, CENTRAL DISTRICT OF CALIFORNIA
BY CLERK

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA-

WESTERN DIVISION

RICHARD HERMAN FORD, Petitioner	)	CV 97-3386-JMI (SH)
v.	)	ORDER RE FURTHER PROCEEDINGS ON A PARTIALLY EXHAUSTED PETITION
S. HUBBARD, WARDEN Respondent.	)	

On May 5, 1997, petitioner, a prisoner in state custody, filed a Petition for Writ of Habeas Corpus in this Court, raising twelve claims. On May 5, 1997, petitioner also filed a Motion to Stay Federal Habeas Corpus Petition Containing Exhausted Grounds While Petitioner Exhausts Unexhausted State Claims on State Appellate No. B041110 (the "Motion"). Respondent

filed an Answer on May 30, 1996, arguing that this Court should not Stay the Petition because a Stay a) would violate the rule requiring dismissal of mixed petitions, and b) would allow petitioner to circumvent the statute of limitations in 28 U.S.C. § 2244(d). In respondent's Return filed June 20, 1997, respondent reiterates that petitioner has failed to exhaust state remedies with respect to Grounds 2, 3 and 8 through 12, inclusive, of the Petition.

On July 15, 1997, petitioner filed "Petitioner's Return to Respondent's Answer" ('Petitioner's Return") and a "Traverse to Return with Memorandum of Points/Authorities" (the "Traverse"). In Petitioner's Return, petitioner asks this Court to Stay the instant Petition or, in the alternative, dismiss the Petition without prejudice. However, in the Traverse, petitioner concedes that he has failed to exhaust several grounds, but petitioner indicates that he would like to proceed on those grounds that are "actionable".

A prerequisite to obtaining federal habeas corpus relief is the exhaustion of available state judicial remedies. 28 U.S.C. § 2254 (b); Picard v. Connor, 404 U.S. 270, 275 (1971). "For reasons of federalism, 28 U.S.C. § 2254 requires federal courts to give the states an initial opportunity to correct alleged violations of its prisoners' federal rights." Duncan v. Henry, 513 U.S. 364, __, 130 L.Ed.2d 865, 868 (1995). Moreover, a federal court will not review a state prisoner's petition for writ of habeas corpus unless it appears that the prisoner has exhausted available state remedies on each and every claim presented. 28 U.S.C. § 2254(b),(c); Rose v. Lundy, 455 U.S. 509, 522 (1982).

A petitioner has satisfied the exhaustion requirement if: (1) he has "fairly presented" his federal claim to the highest state court with jurisdiction to consider it, Anderson v. Harless, 459 U.S. 4, 6 (1982); Picard, 404 U.S. at 275; or (2) he demonstrates that no state remedy remains available. Harmon

v. Ryan, 959 F.2d 1457, 1460 (9th Cir. 1992); Kellotat v. Cupp, 719 F.2d 1027, 1029 (9th Cir. 1983); see 28 U.S.C. Section 2254 (c). In order to "fairly present" a federal claim, a prisoner must describe in the state court proceedings both the operative facts and the precise federal legal theory on which his claim is based. Duncan, 130 L.Ed 2d at 838; Anderson, 459 U.S. at 6.

The claims in federal court must be more than just "essentially the same" claims in the state court proceedings. Johnson v. Zenon, 88 F.3d 828, 830 (1996)

As noted above, Petitioner's Return indicates that petitioner wants this Court to stay the instant petition or dismiss the instant petition without prejudice, but petitioner's Traverse indicates that petitioner wants to proceed on all of the exhausted claims at this time. In light of the foregoing inconsistency, petitioner is ordered to confirm his intentions and his understanding of the consequences of his desired course of action by selecting on of the following options:[1]

1. The present Petition may be dismissed and petitioner can present the issues framed in Grounds 2, 3, and 8 through 12, inclusive, of the Petition, to the California Supreme Court by way of habeas corpus. If relief is denied, a new Petition may be filed with this Court containing only issues that have been fully exhausted.

2. Petitioner can request that this Court now rule on all contentions except Grounds 2, 3, and 8 through 12, inclusive, of the Petition. If this Court rules on all of the grounds except Grounds 2, 3 and 8 through 12, inclusive, it will not later rule on these issues, even if petitioner subsequently does exhaust these issues in review by the California Supreme Court. It is a matter of judicial economy to attempt to avoid piecemeal decisions.

3. Petitioner may establish, in his response to this Order,

---

1. However, petitioner does not have the option of Staying the proceedings.

that he has in fact exhausted those issues in Grounds 2, 3 and 8 through 12, inclusive, of the Petition.

Petitioner shall file and serve within 18 days of the date of this Order a statement that petitioner either: (1) forever waives his right to assert Grounds 2, 3 and 8 through 12, inclusive, in the present Petition; or (2) establishes that these Grounds have been exhausted by habeas corpus review in the California Supreme Court.

If no written response is received, as set forth above, the Magistrate Judge will assume that petitioner agrees to dismissal of the entire petition without prejudice and wishes to exhaust Grounds 2, 3 and 8 through 12, inclusive, before obtaining a ruling from this Court. If Petitioner elects to waive the contentions set forth in Grounds 2, 3 and 8 through 12, inclusive, or if petitioner can adequately demonstrate exhaustion of these issues, the Court will then order a Return from respondents on the merits, and petitioner will be given an appropriate amount of time to file a Supplemental Traverse.

Finally, a district court has discretion to Stay proceedings on a habeas petition containing only exhausted claims, in order to give a petitioner time to exhaust newly discovered claims in state court before amending the federal habeas petition. Greenawalt v. Stewart, 105 F.3d 1268, 1274 (9th Cir. 1997) (per curiam), citing Fetterly v. Paskett, 997 F.2d 1295, 1301-02 (9th Cir. 1993), cert. denied, 513 U.S. 914 (1994); see also Calderon v. U.S. District Court (Gordon), 107 F.3d 756, 761 n.10 (9th Cir. 1997) (as amended per Order, April 15, 1997, 1997 WL 183877).

Therefore, because the instant Petition contains both exhausted and unexhausted claims, this Court does not have the discretion to Stay such a Petition pending the conclusion of state court proceedings. Petitioner's Motion for Stay is denied.

DATED: 8/4/97

/s/
STEPHEN J. HILLMAN
UNITED STATES MAGISTRATE JUDGE

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Richard Herman Ford/ E-10539
Name
CSP/Sac. A, Box 290066

Represa, CA 95671-0066
ADDRESS or PLACE OF CONFINEMENT
and PRISON NUMBER

Note: It is your responsibility to notify the Clerk of Court in writing of any change.
writing of any change.

Note: *If represented by an attorney, his name, address & Telephone number.*

FILED
CLERK U.S. DISTRICT COURT
APR - 7 1998
CENTRAL DISTRICT OF CALIFORNIA
BY CLERK

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

RICHARD HERMAN FORD FULL NAME INCLUDE NAME UNDER WHICH YOU WERE CONVICTED *Petitioner,* vs. S. HUBBARD, Warden NAME OF WARDEN, SUPERINTENDENT JAILOR, or AUTHORIZED PERSON having custody of petitioner *Respondent.* and ATTORNEY GENERAL OF THE STATE OFCa. Daniel Lungren Additional Respondent.	CASE NO.CV98-2556WDK-SH To be supplied by the Clerk of the United States District Court PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

LODGED
CLERK, U.S. DISTRICT COURT
APR - 6 1998
CENTRAL DISTRICT OF CALIFORNIA

(If petitioner is attacking a judgment which imposed a sentence to be served in the *future*, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the *future* under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.)

INSTRUCTIONS – READ CAREFULLY

This petition shall be legibly handwritten or typewritten, and signed by the petitioner, under penalty of perjury. You must forth CONCISELY the answer to each question in the proper space on the form. Any false statement of material may serve as the basis for prosecution and conviction for perjury.

You must not attach separate pages to this petition, except that *ONE* separate additional page is permitted in answering Question No. 10.

Upon receipt of a fee of $5.00 you petition will be filed if it is in proper order.

If you are seeking leave to proceed *in forma pauperis* (without paying the $5.00 filing fee and other court costs), then you must also execute the declaration on the last page, setting forth information which establishes your inability to pay the fees and costs of the proceedings or to give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your prison account exceeds $*25.00*, you must pay the filing fee as required by the rule of the district court.

When the petition is completed, the original and two copies must be mailed to the Clerk of the United States District Court for the Central District of California, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012. ATTN: Intake/Docket Section.

Only one sentence, conviction or parole matter may be challenged in a single petition. If you challenge more than one, you must do so by separate petitions.
Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

PLEASE COMPLETE THE FOLLOWING: (Check appropriate number)

This petition concerns:

1. __X__ A conviction.

2. __X__ A Sentence.

3. _____ Jail or prison conditions.

4. _____ Prison discipline.

5. _____ A parole problem.

6. _____ Other.

PETITION

1. Place of detention CALIFORNIA STATE PRISON-SACRAMENTO, Represa, CA

2. Conviction on which the petition is based (a separate petition must be filed for each conviction being attacked).

a. Nature of offense involved (include all counts) Conspiracy to Murder; Murder; Special Circumstance of Murder for Financial Gain.

b. Penal or other code section or sections PC §§182, 187, & 190.2(a)(1)

c. Name and location of sentencing court Los Angeles Superior Court, Northwest District- Van Nuys, 6230 Sylmar Avenue, Van Nuys, CA 91401.

d. Case Number Los Angeles No. A399663; Court of Appeal No. B041110

e. Date of Conviction October 11, 1998

f. Date of Sentence February 23, 1989

g. Length of sentence on each count 25-Life [Stayed (PC § 182)]; Life Without Possibility of Parole [PC §§187, 190.2(a)(1)].

h. Plea (check one)
(1) Not guilty (x) (2) Guilty ( ) (3) Nolo Contendere ( )

i. Kind of trial (check one)
(1) Jury (x) (2) Judge alone ( ) (3) Judge alone on transcript ( )

j. Did you testify at trial? Yes ( ) No (x)

3. Did you appeal from the conviction of sentence?
Yes (x) No ( )

4. If you did appeal, give the following information for each appeal

a. (1) Name of Court California Court of Appeal, 2nd Appellate District, Division 7
(2) Result Conviction Affirmed- Petition for Rehearing Denied
(3) Date of result November 16, 1992
(4) Citation or number of opinion B04110
(5) Grounds raised (list each)
(a) Tape recording used in evidence was in violation of Constitutionally cognizable expectation of privacy.
(b) Seizure of recording exceeded scope of warrent.
(c) Warrent for tape recording obtained in violation of Title III, Omnibus Crime Act, 18 U.S.C. 2510 et. seq.
(d) Tape recording was used in violation of protected marital privilege.
(e) Subsequent judge changed original judge's ruling of PC§995 (People's "judge shopping") constituted abuse of discretion and fourteenth amend. violation.

(f) Inaccurate ruling regarding "overt acts" among conspirators was misstatement of law and amounted to abuse of judicial discretion.
(g) Abuse of discretion for refusal of juror instruction regarding unanimous agreement on specific overt act.
(h) Abuse of discretion by court in refusing impeachment of People's witness regarding felony conviction and hatred of LAPD where petitioner was employed.
(i) Abuse of discretion in allowing prejudicially misleading photograph into evidence.
(j) Instruction on motive was unsupported by the evidence and was prejudicially misleading.
(k) Instruction on admissions was ambiguous as worded and should not have been given.

b. (1) Name of Court California Supreme Court
(2) Result Petition for Review - Denied
(3) Date of result February 11, 1993
(4) Citation or number of opinion S030295
(5) Grounds raise (list each)
(a) Jail tape recording
(b) Investigative authority/tape
(c) Marital relation/4th Amndt.
(d) No "good faith" exception
(e) Marital privilege
(f) "overt acts" allegations/ruling
(g) Change of 995 ruling violation
(h) Jury unanimity instructions

5. If you did not appeal:

a. State your reasons Petitioner did not "exhaust" Grounds b, c, h, i, j & k [see Part-4(a)(5)] and the "newly discovered" issues [stated at Part -7] due to the neglect of state appointed [C.A.P.] appellate counsel

b. Did you seek permission to file a late appeal?
Yes ( ) No (x)

6. Other than a direct appeal, have you previously filed any petitions, applications or motions with respect to the conviction in any court, state or federal? Yes (x) No ( )

7. If your answer to 6 was *YES* give the following information.

a. (1) Name of court U.S. District Court-Central District/ 312 North Spring Street

(2) Nature of proceeding Petition for H.C./ "MOTION TO STAY FED PETITION FOR H.C. CONTAINING EXHAUSTED GROUND WHILE PETITIONER EXHAUSTS UNEXHAUSTED STATE CLAIMS ON STATE APPELLATE No. B041110"

(3) Grounds raised (a) Tape evidence
(b) [tape] exceeded scope of warrant
(c) Warrant violated 18 USC §2510
(d) Tape recording violated privilege
(e) Abuse of discretion
(f) Trail Court error re. "Overt acts"
(g) Abuse of discretion/instruction
(h) Abuse of discretion re. impeachment
(i) Abuse of discretion re. photo
(j) Instruction re. "motive" prejudice
(k) Instruction on "admissions" prejudice

(4) Result "MOTION" denied/Pet. for writ of HC "DISMISSED" W/O prejdc

(5) Date of result 10-14-97

(6) Citation or number of any written opinions or orders entered pursuant to each such disposition. CV-97-3386-RAP (SH)

b. (1) Name of court California state Supreme Court

(2) Nature of proceedings Petition for writ of habeas corpus/filed 10-24-97

(3) Grounds raised
a) Seizure exceeded warrant.
b) Warrant violated Fed Regs.
c) Abuse of discretion/witness
d) Abuse of discretion/Photo.
e) Instruction on motive
f) Instruction on "admissions"
g) Joinder of applicable issues raised by co-DEFENDANT

(4) Result Denied

(5) Date of result March 25, 1998

(6) Citation or number of any written opinions or orders entered pursuant to each such disposition. S065283

c. (1) Name of court California state Supreme Court

(2) Nature of proceedings "Supplemental" Pet. for W of H.C. / filed: 11-19-97

(3) Grounds raised "Newly Discovered Evidence" "Miscarriage of Justice"

a) Investigatory and prosecutorial misconduct/drugged witness

b) Investigatory and prosecutorial misconduct/ "police-agents"

c) Prosecutorial misconduct/Misstate ment of Evidence

d) Judicial nonfeasance/Abuse of

discretion/Directed verdict.

e) Insufficiency of evidence to prove charged allegations.

(4) Result DENIED

(5) Date of result MARCH 25, 1998

(6) Citation or number of any written opinions or orders entered pursuant to each such disposition. S06583

8. Was an evidentiary hearing held? Yes ( ) No (x)
9. If so, state the name of the court, and the result. N/A

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10. Grounds for Relief:

a. Ground One: TESTIMONY USED TO CONVICT PETITIONER WAS OBTAINED FROM "DRUGGED" ALLEGED "CO-CONSPIRATOR" [WHO HAS SINCE RECANTED AND APPEALED THE "COERCED" PLEA-BARGAIN] AND VIOLATED HIS RIGHTS.

Supporting Facts: Indictment and conviction of PETITIONER derived and was obtained by the false and "coerced" testimony of alleged "co-conspirator" and misconduct of district officials who held said co-conspirator incommunicado whereat (according to her later petitions for WoHC and 1983 civil complaint) she was forced to take psychotropic drugs and was threatened with the death penalty if she did not cooperate to implicate the PETITIONER.

b. Ground Two: "EMPLOY" OF "POLICE-AGENTS" TO INCULPATE THE PETITIONER BY FALSE TESTIMONY WAS INVESTIGATORY AND

PROSECUTORIAL MISCONDUCT VIOLATING STARE DECISIS OF MIRANDA & WONG SUN AND PETITIONER'S CONSTITUTIONAL RIGHTS PURSUANT TO 4th, 5th 6th & 14th AMENDMENTS.

Supporting Facts: PETITIONER alleges that the conviction and sentence of which he presently suffers was illegally obtained by employ and use of "police-agents" [Adams & Love] who mitigated their criminal conduct (and received financial or other inducements) by co-operation and testimony to inculpate the PETITIONER resulting in his unlawful indictment and subsequent conviction.

c. Ground Three: MISSTATEMENT OF EVIDENCE AND OTHER CASE FACTORS TO CAUSE INDICTMENT AND SELECTIVE PROSECUTION OF PETITIONER VIOLATED [THE "TRUTH-IN-EVIDENCE" DOCTRINE] HIS CONSTITUTIONAL RIGHTS.

Supporting Facts: Aforesaid misconduct by deputy district attorney and subordinate officials of the Los Angeles Police Department (to falsify search-warrant affidavits; misstatement of evidence; employ and use of said "police-agents" and causing false testimony to a Grand Jury) resulted in indictment, conviction and judgment imprisoning PETITIONER for the duration of his life is violation of his Constitutional rights.

d. Ground Four: JUDICIAL MISFEASANCE, ABUSE OF DISCRETION AND NONFEASANCE WAS MISDIRECTION OF JURY AND CONSTITUTED A DIRECTED VERDICT WHICH VIOLATED

PETITIONER'S RIGHT TO EQUAL PROTECTION, DUE PROCESS AND TRIAL "... by an impartial jury.."

Supporting Facts: Conduct and non-feasance by judicial officials legitimized and sanctioned misconduct and malfeasance of deputy district attorney and police officials resulted in validation of illegal search warrant; employ of "police-agents" ; misstatement of evidence or law; abuse of discretion; improper or lack of (jury) instructions served to prejudice PETITIONER'S right to; the presumption of innocence; Equal Protection, Due Process and fair trial ".. by an impartial jury..", which PETITIONER contends constitutes misdirection of jury; a "directed verdict" and violation of law.

e. Ground Five: WARRANT FOR ["WIRE -TAP" TAPE RECORDING WAS OBTAINED IN VIOLATION OF Title-III Omnibus Crime Act (18 USC § 2510 et seq.) VIOLATING PETITIONER'S CONSTITUTIONAL RIGHTS.

Supporting Facts: Investigative officials did not adhere to federal mandates and circumvented said requirements regarding: time limit; affidavits and "probable cause" for obtaining court order to conduct electronic eavesdropping upon (only) the (as yet not convicted) PETITIONER and his spouse in violation of the 4th, 5th and 14th Amendments of the U.S. Constitution.

f. Ground Six: "SEIZURE" [of "tape-recorded" evidence was illegal and] EXCEEDED THE SCOPE OF THE WARRANT, VIOLATING THE CONSTITUTIONAL RIGHTS OF THE PETITIONER AND HIS SPOUSE BY THEIR

ABRIDGEMENT.

Supporting Facts: Warrant, to obtain order for the "tape-recording" of the jail-house visits of [only] the PETITIONER'S spouse, referred to "future plans" of criminal activity. It made no authorization for seizure of information with respect to (alleged) prior criminal conduct nor exemption as to abridgement or violation of 4th, 5th and 14th Amendments of the U.S. Constitution.

g. Ground Seven: THE "GOOD FAITH" EXCEPTION TO WARRANT REQUIREMENTS DID NOT APPLY, ABRIDGING AND VIOLATING THE CONSTITUTIONAL RIGHTS OF THE PETITIONER AND HIS SPOUSE.

Supporting Facts: Absent a showing of "probable cause" existing law required that a "good fait" exception is not sufficient to abrogate observance of existing statutes pertaining to electronic surveillance of (select) pre-trial jail prisoners and/or private citizens (by the abridgement or violation of Constitutional rights).

h. Ground Eight: THE "CRIME OR FRAUD" EXCEPTION TO WARRANT REQUIREMENTS DID NOT APPLY, ABRIDGING AND VIOLATING THE CONSTITUTIONAL RIGHTS OF THE PETITIONER AND HIS SPOUSE.

Supporting Facts: PETITIONER contends that the rationalizations and subsequent justifications for exemption from warrant requirements was a fait accomplis and extrapolated after-the-fact of violating 'wire-tap' regulations [by falsification of affidavits so as to obtain desired court order] which aforesaid officials attempt to

justify by pre-trial criminalization of PETITIONER and his spouse.

i. Ground Nine: THE 'MARITAL RELATION' [of PETITIONER and his spouse] TRIGGERED A FOURTH AMENDMENT PROTECTION WHICH WAS VIOLATED ALONG WITH EXISTING 'MARITAL PRIVILEGE WHEN OFFICIALS CONTRIVED TO TARGET THE RELATIONSHIP BY WIRE-TAP SURVEILLANCE.

Supporting Facts: Investigative officials contrived the pre-determined search of PETITIONER'S [former] residence, knowing that on a usual visiting day his spouse would subsequently visit, where after said officials could [and did] then tape-record the reaction and statements of the PETITIONER by circumventing Miranda, the 'marital privilege', 4th, 5th and 14th Amendment rights.

j. Ground Ten: FEDERAL LAW (Of 1983) DID RECOGNIZE THAT THE FOURTH AMENDMENT APPLIES IN A JAILHOUSE SETTING WHICH WAS VIOLATED WHEN INVESTIGATIVE OFFICIALS TARGETED ONLY THE PETITIONER AND HIS SPOUSE FOR ELECTRONIC SURVEILLANCE WITHOUT BENIFIT OF COUNSEL OR ANY NOTIFICATION THAT THEIR CONSTITUTIONAL RIGHTS WERE SUSPENDED.

Supporting Facts: Illegally obtained warrant violated the 'material privilege' of PETITIONER and his spouse, and their reasonable expectations against only their relationship being targeted so that any tape-recording derived by said surveillance would be constructed and interpreted to have

criminal intent without benefit of any Constitutional provisions.

k. Ground Eleven: AN INVESTIGATIVE AUTHORITY THAT HAS NO CONCERN FOR, OR AUTHORITY OVER, JAIL SECURITY RECEIVES NO DEFERENCE FOR ITS INTRUSIONS ON INMATE/CITIZEN PRIVACY [AND VIOLATED THE CONSTITUTIONAL RIGHTS OF THE PETITIONER AND HIS SPOUSE].

Supporting Facts: PETITIONER contends that said surveillance was undertaken by officers of a police agency, not charged with jail security, for the sole purpose of circumventing Miranda, 'marital privilege' and abridging the rights of PETITIONER and his spouse.

l. Ground Twelve: CHANGING THE RULING ON 995 MOTION VIOLATED DUE PROCESS [AND WAS AN ABUSIVE OF DISCRETION WHICH PREJUDICED PETITIONER'S RIGHT TO A FAIR TRIAL, EQUAL PROTECTION AND DUE PROCESS].

Supporting Facts: Rather than appealing an adverse ruling, granted to defense on 995 motion, the prosecution moved (CCP 170.6) to preemptory challenge the seated judge. The subsequent judge modified the ruling on 'overt-acts' which served to incriminate the PETITIONER by association. PETITIONER contends that this challenge was 'judge shopping' by the state in order to circumvent the ruling; cause its modification and secure a judge less neutral.

m. Ground Thirteen: RULING THAT DISCUSSIONS AND INTERNAL ARRANGEMENTS AMONG [ALLEGED] C0-CONSPIRATORS ARE "OVERT-ACTS" WAS MISSTATEMENT OF LAW AND ABUSE OF DISCRETION WHICH VIOLATED THE PETITIONER'S CONSTITUTIONAL RIGHT TO A FAIR TRIAL.

Supporting Facts: Trial Court ruling, with respect to "overt-acts" allegations, constituted an abuse of discretion which inculpated the PETITIONER in a criminal relationship charged as conspiracy. Said 'overt-acts' as alleged by prosecutor were no, by definition, any acts of PETITIONER but rather conduct unrelated to illegal activity or of third party conspirators - - the chief of which has since recanted and appealed for relief from her judgment.

n. Ground Fourteen: ABUSE OF DISCRETION BY TRIAL COURT IN REFUSING IMPEACHMENT OF PEOPLE'S WITNESS REGARDING (PRIOR) FELONY CONVICTIONS AND (WITNESS) HATRED OF L.A.P.D. (where PETITIONER was employed] VIOLATED HIS RIGHT TO CONFRONT WITNESSES AND RECEIVED A FAIR TRIAL.

Supporting Facts: People's witness, Darlis Chefalo, allegedly had a child (who was) raped by L.A.P.D. officers and series of arrests for offenses including burglary; heroin; assault W/deadly weapon; and aggravated assault which occurred between 1959 and 1977 (with the events she testified to having occurred in 1982). Court ruling against admissions of aforesaid evidence, for impeachment purposes, violated the PETITIONER'S 6th Amendment

right to confront witnesses (present a defense) and to receive a fair trial.

o. Ground Fifteen: ALLOWING [PREJUDICIAL MISLEADING] PHOTO INTO EVIDENCE PREJUDICED PETITIONER'S RIGHT TO [PRESUMPTION OF INNOCENCE] RECEIVE A FAIR RIAL AND WAS AN ABUSE OF DISCRETION BY TRIAL COURT

Supporting Facts: A news paper photo graph, found in the desk of prosecution witness showed PETITIONER and c-DEFENDANT huddled together in conference. This photo was shown to his jury and it is PETITIONER's contention that it evinced an image of conspiracy which prejudiced his right to [the presumption of innocence and] a fair trial by an impartial jury.

p. Ground Sixteen: [CALJIC-2.71] INSTRUCTION ON "ADMISSIONS" WAS AMBIGUOUS AS WORDED VIOLATING PETITIONER'S RIGHT TO [PRESUMPTION OF INNOCENCE] A FAIR TRIAL.

Supporting Facts: Trial court instructed jury with modified CALJIC-2.71 regarding statements made by DEFENDANT/PETITIONER [on seized tape of jailhouse visit]. The wording of said instructions suggested to the jurors that their only function was to determine whether or not statements constituting 'admissions' were in fact said by DEFENDANT. That it was PETITIONER'S voice [on said tape] was not in controversy — and modified instruction served to obscure the juror's function of determining whether statements were made by the

DEFENDANT actually constituted "admissions" of criminal activity [or waiver of Constitutional rights, with respect to the tape's seizure and testimony of misconduct].

q. Ground Seventeen: [CALJIC-2.51] INSTRUCTION ON "MOTIVE" [IS] UNSUPPORTED BY EVIDENCE AND WAS PREJUDICIALLY MISLEADING VIOLATING PETITIONER'S RIGHT TO [THE PRESUMPTION OF INNOCENCE] A FAIR TRIAL [". . by an impartial jury. ."]

Supporting Facts: Trial Court instructed jury with CALJIC-2.51 regarding "motive". There was no specific evidence presented that DEFENDANT/PETITIONER had a specific motive collateral to that inherent in the allegation of murder for financial gain, which would be universally applicable to anyone so charged. Therefore, [it is the PETITIONER's contention that] the instruction was unjustified and prejudiced [misleading] his jury constituting reversable error.

r. Ground Eighteen: [LACK OF] JURY UNANIMITY INSTRUCTION FOR "OVERT-ACTS", IN A CONSPIRACY [PRECLUDED DELIBERATIONS AS TO 'ACTS' WHICH WERE NOT PROVEN AS TO MOTIVE OR CULPABILITY], VIOLATED PETITIONER'S CONSTITUTIONAL RIGHTS.

Supporting Facts: Trial Court failure to instruct jury with respect to existing requirment [in accord with Ramiriz (1987) 189 Cal.App.3d 603] precluded DEFENDANT/PETITIONER'S jury from deliberations as to alleged 'overt-acts' and evidence of culpability or insufficiency of evidence, with which to conclude guilt as

to allegations of "conspiracy", violated PETITIONERS's 6th and 14th Amendment rights.

s. Ground Nineteen: FELONY CONVICTION JUDGMENT AND SENTENCE WAS MISCARRIAGE OF JUSTICE [OBTAINED BY AFORESAID MISCONDUCT AND JUDICIAL MISFEASANCE] VIOLATING THE STARE DECISIS OF MIRANDA, WONG SUN, BRADY & BERGER AND] PETITIONER'S 4TH., 5TH, 6TH, 8TH & 14TH. AMENDMENT RIGHTS OF THE U.S. CONSTITUTION.

Supporting Facts: Aforesaid acts, omissions and non-feasance by district and judicial official caused or condoned the violations of the PETITIONER's Constitutional rights with respect to observation of existing stare decisis and provisions for effective assistance of counsel; Equal Protection, Due Process and the presumption of innocence [at trial] did prejudice his right to receive a fair trial.

t. Ground Twenty: PETITIONER JOINS IN ALL APPLICABLE ISSUES RAISED AND EXHAUSTED BY THE CO-DEFENDANT AND ALLEGED "CO-CONSPIRATOR" IN THEIR APPEAL FOR RELIEF FROM THE AFORESAID CONVICTION AND JUDGMENTS.

11. If any of the grounds listed in 10 were not previously presented to this court or any other court, state briefly which grounds were not so presented and give your reasons. _____

12. Do you have any petition, appeal or parole matter panding

in any court, either state or federal as to the judgment of conviction under attack? Yes ( ) No (x)

13. Are you presently represented by counsel? Yes ( ) No (x)

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled by this proceeding.

Dated this 1st. day of April , 1998 /s/
Richard Herman Ford
Pro Se

VERIFICATION

I DECLARE AND VERIFY THAT THE FOREGOING IS TRUE AND CORRECT, UNDER PENALTY OF PERJURY.
Dated this 1st. day of April , 1998 /s/
Richard Herman Ford
In Propria Persona

Richard Herman Ford/ E-10539
Name
CSP/Sac. A, Box 290066

Represa, Ca 95671-0066
ADDRESS or PLACE OF CONFINEMENT
and PRISON NUMBER

Note: It is your responsibility to notify the Clerk of Court in writing of any change.

Note: *If represented by an attorney, his name, address & Telephone number.*

FILED
CLERK U.S. DISTRICT COURT
APR - 7 1998
CENTRAL DISTRICT
OF CALIFORNIA
BY CLERK

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

RICHARD HERMAN FORD
FULL NAME INCLUDE NAME UNDER WHICH YOU WERE CONVICTED

Petitioner,

vs.

S. HUBBARD, Warden
NAME OF WARDEN, SUPERINTENDENT JAILOR, or AUTHORIZED PERSON having custody of petitioner

Respondent.

and

ATTORNEY GENERAL OF THE STATE OFCa.
Daniel Lungren
Additional Respondent.

CASE NO.CV98-2557ER-SH

To be supplied by the Clerk of the United States District Court

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

LODGED
CLERK, U.S. DISTRICT COURT
APR - 6 1998
CENTRAL DISTRICT OF CALIFORNIA

(If petitioner is attacking a judgment which imposed a sentence to be served in the *future*, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the *future* under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.)

INSTRUCTIONS – READ CAREFULLY

This petition shall be legibly handwritten or typewritten, and signed by the petitioner, under penalty of perjury. You must forth CONCISELY the answer to each question in the proper space on the form. Any false statement of material may serve as the basis for prosecution and conviction for perjury.

You must not attach separate pages to this petition, except that *ONE* separate additional page is permitted in answering Question No. 10.

Upon receipt of a fee of $5.00 you petition will be filed if it is in proper order.

If you are seeking leave to proceed *in forma pauperis* (without paying the $5.00 filing fee and other court costs), then you must also execute the declaration on the last page, setting forth information which establishes your inability to pay the fees and costs of the proceedings or to give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your prison account exceeds $*25.00*, you must pay the filing fee as required by the rule of the district court.

When the petition is completed, the original and two copies must be mailed to the Clerk of the United States District Court for the Central District of California, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012. ATTN: Intake/Docket Section.

Only one sentence, conviction or parole matter may be

challenged in a single petition. If you challenge more than one, you must do so by separate petitions.
Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

PLEASE COMPLETE THE FOLLOWING: (Check appropriate number)

This petition concerns:

1. __X__ A conviction.

2. __X__ A Sentence.

3. _____ Jail or prison conditions.

4. _____ Prison discipline.

5. _____ A parole problem.

6. _____ Other.

PETITION

1. Place of detention California State Prison-Sacramento, Represa, California 95671-0066

2. Conviction on which the petition is based (a separate petition must be filed for each conviction being attacked).

a. Nature of offense involved (include all counts) Conspiracy to Commit Murder, Attempted Murder w/Firearm, Administering Stupefying Drugs, Robbery, Conspiracy to Commit Robbery w/Arming, Great Taking Enhancement, False Imprisonment, Assault With Firearm.

b. Penal or other code section or sections PC §§ 182/187, 664/187, 12022(a), 222, 211, 182/211, 12022.5 12022.6, 236, 12022(a), 12055.5, 245(a)(2).

c. Name and location of sentencing court Los Angeles Superior Court – Central District, 111 N. Hill St., Los Angeles, CA 90012-3117

d. Case Number Superior Court No. A392422; Court of Appeal No. B033751.

e. Date of Conviction January 6, 1988

f. Date of Sentence March 11, 1988

g. Length of sentence on each count 25-Life + 11 Years

h. Plea (check one)
(1) Not guilty (x) (2) Guilty ( ) (3) Nolo Contendere ( )

i. Kind of trial (check one)
(1) Jury (x) (2) Judge alone ( ) (3) Judge alone on transcript ( )

j. Did you testify at trial? Yes (x) No ( )

3. Did you appeal from the conviction of sentence?
Yes (x) No ( )

4. If you did appeal, give the following information for each appeal

a. (1) Name of Court California Court of Appeal, 2nd Appellate District, Division 7
(2) Result Conviction Affirmed – Petition for Rehearing Denied
(3) Date of result October 9, 1992
(4) Citation or number of opinion 10 Cal. App. 4th 20; B033751
(5) Grounds raised (list each)
(a) Trial court erred in quashing Subpoena Duces Tecum issued by defense concerning freelance writer who 10 hours of taped interviewed with chief prosecution witness about case.
(b) Defense was unconstitutionally burdened re: balancing test of freelance writer interests pursuant to DELANEY.
(c) Trial court erred in not allowing evidence that prosecutor committed misconduct for instruction police to cease interviewing pros. wit. (impeachment).
(d) Trial court erred in not allowing appellant to present extrinsic evidence of third-party culpability.

(e) Trial court's refusal to allow details of significant evidence for the benefit of co-defendant, hampered petitioner's defense.
(f) Failure to allow evidence of specific acts of misconduct in order to impeach prosecution's prime witness's credibility was error.
(g) Appellant joined in all issues raised by co-appellant in his opening brief and incorporated all arguments therein.

b. (1) Name of Court California Supreme Court
(2) Result Petition for Review - Denied
(3) Date of result January 14, 1993
(4) Citation or number of opinion S029796
(5) Grounds raise (list each)
(a) Appellate Ct. refused to review of [tape Trial Ct. discretionary error.
(b) At issue [tape] material was not within criteria of 'shield law'.
(c) "Balancing Test of Delaney unConstitutionally burdened the PETITIONER.
(d) Due Process duty to collect and share exculpatory evidence.
(e) Jury unanimity instructions required re. each of multiple "overt acts'.
(f) Combination of evidentiary errors deprived Appellant right to present a
(g) defense

5. If you did not appeal:

a. State your reasons Petitioner did not 'exhaust' Ground (d) [See: Part-4 a.(5)] and the 'newly

discovered' issues [stated at Part-7(a), (b) & (c)] due to the neglect of state appointed [C.A.P.] appellant counsel.

b. Did you seek permission to file a late appeal? Yes(?) No ( )

6. Other than a direct appeal, have you previously filed any petitions, applications or motions with respect to the conviction in any court, state or federal? Yes (x) No ( )

7. If your answer to 6 was *YES* give the following information.

a. (1) Name of court U.S. DISTRICT Ct — Central District, 312 Spring Street, L.A. 90012
(2) Nature of proceeding PETITION FOR WRIT OF HABEAS CORPUS/MOTION TO STAY FEDERAL HABEAS CORPUS PETITION CONTAINING EXHAUSTED GROUNDS WHILE PETITIONER EXHAUSTS UNEXHAUSTED STATE CLAIMS ON STATE APPELLATE No. B033751
(3) Grounds raised Same as alleged at Part-4. a. (5) et seq.
(4) Result MOTION: DENIED, PETITION DISMISSED W/O PREJUDICE
(5) Date of result 9-11-97
(6) Citation or number of any written opinions or orders entered pursuant to each such disposition. CV-97-3385-R.A.P. (S.H.)

b. (1) Name of court California state Supreme Court
(2) Nature of proceedings NOTICE AND MOTION FOR LEAVE TO PROCEED — RELIEF FROM DEFAULT
(3) Grounds raised UNEXHAUSTED and 'Newly Discovered' issues as alleged at Part-5. a.

(4) Result Notice and MOTION returned "UNFILED""Court no longer has jurisdiction.."
(5) Date of result 8-1-97
(6) Citation or number of any written opinions or orders entered pursuant to each such disposition. S029796 (B033751) People v. Von Villas, et al.

c. (1) Name of court California state Supreme Court
(2) Nature of proceedings PETITION FOR WRIT OF HABEAS CORPUS
(3) Grounds raised a.) T.C. error denying extrinsic evidence of 3rd.–party culpability
b.) Jury Misconduct. c.) Appellate review error re. search warrant.
d.) Failure to secure and preserve favorable and exculpatory evidence.
e.) T.C. error refusing Jury instruction re. loss of evidence
f.) Employ and use of 'police-agents' to [incriminate and] violate petitioner's
g.) T.C. error refusing to instruct Jury had to be unanimous as to each overt act.
h.) Ineffective Assistance of Counsel. i.) I.A.C. Appellate Counsel.
(4) Result DENIED
(5) Date of result MARCH 25, 1998
(6) Citation or number of any written opinions or orders entered pursuant to each such disposition. S064681

8. Was an evidentiary hearing held? Yes ( ) No (x)
If so, state the name of the court, and the result. N/A

9. If you answer to 6 was NO, explain briefly why you did not seek post-conviction relief in the state courts _____

10. Grounds for Relief:

a. Ground One: EMPLOY AND USE OF POLICE-AGENT' TO [INCRIMINATE AND] VIOLATE THE PETITIONER's CONSTITUTIONAL RIGHTS TO BE FREE FROM SAID INCRIMINATION; ILLEGAL SEARCH & SEIZURE; AND FALSE WITNESS [VIOLATED FRUIT -OF-POISONOUS-TREE DOCTRINE].

Supporting Facts: Information provided by said 'police-agent' was false [as to the PETITIONER] and for the purposes of entrapment and to inculpate the PETITIONER in a criminal activity which were the fantasy of said 'agent' who admitted comitting acts of theft; receiving stolen property; interstate transportation of illegal firearms; acts of prostution; and subsequent criminal activities resulting in arrest, detention and release into the custody of Los Angeles police officials.

b. Ground Two: EQUAL PROTECTION AND DUE PROCESS RIGHTS WERE VIOLATED BY FAILURE TO SUPPRESS A [SEARCH] WARRANT SO LACKING IN SPECIFICITY AND PARTICULARITY THAT IT VIOLATED SEARCH & SEIZURE [REQUIREMENTS].

Supporting Facts: A Search warrant based on false testimony and faulty affidavit produced no evidence of unlawful acts or stolen items attributable to PETITIONER. Item attributed to co-DEFENDANT were used to inculpate PETITIONER by association and false testimony of said police-agent, violating his Constitutional right.

c. Ground Three: TRIAL COURT ERROR QUASHING DEFENSE SUBPOENA DUCES TECUM Re. ['FREELANCE' WRITER AND 10 hrs.] TAPED INTERVIEW WITH CHIEF PROSECUTION WITNESS [said 'POLICE-AGENT'] ABOUT THE CASE DENIED PETITIONER EXCULPATORY EVIDENCE.

Supporting Facts: Free-lance writer conducted [taped] interview with 'police-agent' Bruce Adams. Quashing defense Subpoena Duces Tecum of tape-recording denied the PETITIONER [exculpatory] evidence; to confront witnesses; and the right to present a defense.

d. Ground Four: DEFENSE WAS UNCONSTITUTIONALLY BURDENED BY "BALANCING TEST" OF 'FREE-LANCE' WRITER'S INTEREST, PURSUANT TO DELANEY [v. Superior Court (1980) 50 Cal.3d 785]. 'SHIELD LAW' DOES NOT APPLY TO NON-CONFIDENTIAL MATERIALS.

Supporting Facts: Free-lance writer stated that his only interest [in the tapes] were pecuniary. PETITIONER's appellate counsel specifically stated (see A.O.B. at Pg. 40) that access to said tapes were ". . necessary to present it [in] order to preserve the issue[s] for further review." PETITIONER alleges that said 'tapes' contain admissions of criminal conduct by said 'agent' exculpatory to PETITIONER.

e. Ground Five: FAILURE TO ALLOW EVIDENCE OF SPECIFIC ACTS OF [CRIMINAL] MISCONDUCT FOR IMPEACHMENT PURPOSES OF 'POLICE-AGENT'S' CREDIBILITY WAS

ERROR AND VIOLATED THE PETITIONER's RIGHT TO CONFRONT WITNESSES, PRESENT A DEFENSE AND FAIR TRIAL.

Supporting Facts: After PETITIONER and co-DEFENDANT were arrested, 'police-agent' Bruce Adams became a "protected witness". During this period of time he was arrested on two separate occasions and released into the custody of Los Angeles police officials. Abuse of discretion precluded PETITIONER from presenting this evidence for impeachment purposes and defense contention of third-party culpability.

f. Ground Six: TRIAL COURT NOT ALLOWING EVIDENCE THAT PROSECUTOR COMMITTED WILFULL MISCONDUCT BY INSTRUCTING [POLICE] INVESTIGATOR TO CEASE TAPED INTERVIEWS OF PROSECUTION WITNESS [POLICE-AGENT], [DENIED PETITIONER'S CONSTITUTIONAL RIGHT TO CONFRONT WITNESSES, PRESENT A DEFENSE AND RECEIVE A FAIR TRIAL].

Supporting Facts: Deputy district attorney, Robert Jorgensen, told police investigators to stop taping [interrogation sessions of] the [prosecution] witness lest the information of tape come back to "haunt" him. Considering the factors of the case and that the 'witness' was aforesaid 'police-agent' [Bruce Adams], it is the contention of the PETITIONER that the deputy district attorney [acting under color of authority] deliberately suppressed potentially exculpatory evidence from the defense, violating existing stare decisis, Evidence and Procedural Codes.

g. Ground Seven: TRIAL COURT ERRORED BY NOT ALLOWING [DEFENDANT] PETITIONER TO PRESENT EXTRINSIC EVIDENCE OF THIRD-PARTY CULPABILITY, DENYING [HIS] STATE AND FEDERAL CONSTITUTIONAL RIGHT TO EXCULPATORY EVIDENCE, FAIR TRIAL AND PRESENT DEFENSE.

Supporting Facts: Police officials were in possession of evidence [by descriptions of witnesses] that persons responsible for a robery [PETITIONER was accused of] were done by the same suspects who had committed other such robberies. Trial court ruling denied PETITIONER's right to the presumption of innocence/fair trial.

h. Ground Eight: TRIAL COURT ERROR COMBINATION DEPRIVED [DEFENDANT] PETITIONER's CONSTITUTIONAL RIGHT TO [CONFRONT WITNESSES] PRESENT A DEFENSE AND FAIR TRIAL.

Supporting Facts: Trial court refused to allow evidence with respect to PETITIONER relationship to Darlis Chefalo; taped conversation among 'police-agent' (Adams] and [alleged victim] Loguercio, elided [of] all specific references to [Von Villas] co-DEFENDANT; and those as aforesaid [ibid.] above were abuse of discretion whose combination precluded PETITIONER's exercise of Constitutional provisions.

i. Ground Nine: EQUAL PROTECTION AND DUE PROCESS RIGHTS WERE VIOLATED BY STATE'S FAILURE TO SECURE AND PRESERVE POTENTIALLY EXCULPATORY AND FAVORABLE EVIDENCE

Supporting Facts: State officials lost and/or destroyed the alleged 'crime-scene' [and other] evidence while defendant [PETITIONER] were in custody — even after said evidence was being requested by discovery motion — and became elements of contention with respect to evidence and/or instructions to be considered by the PETITIONER'S jury.

j. Ground Ten: TRIAL COURT PREJUDICED [DEFENDANTS] PETITIONER'S RIGHT TO RECEIVE A FAIR TRIAL BY REFUSING DEFENSE REQUEST [FOR JURY] INSTRUCTIONS Re. INFERENCES TO BE DRAWN AGAINST THE [PEOPLE, for] LOSS OF EVIDENCE SEIZED BY [ILLEGAL] WARRANT.

Supporting Facts: Trial court abused its discretion in ruling against defense request for instructions with respect to aforesaid loss or destruction of 'crime-scene' and other [alleged] evidence which was attributed to [defendants] PETITIONER by said 'police-agent' but not proven except that he was arrested [along with said agent] in proximity or by allegation of items seized by [illegal] warrant from co-DEFENDANT's property.

k. Ground Eleven: TRIAL COURT ERROUNEOUSLY REFUSED TO INSTRUCT THAT THE JURY HAD TO BE UNANIMOUS AS TO EACH [ALLEGED] 'OVERT-ACT' OF [ALLEGED] CONSPIRACY DENYING PETITIONER'S RIGHT TO EQUAL PROTECTION, DUE PROCESS AND TO RECEIVE A FAIR TRIAL.

Supporting Facts: Trial court abused its discretion, violating the Constitutional rights of the PETITIONER

[DEFENDANT], when it refused to instruct the jury with respect to unanimity as to each [alleged' ['overt-act' as a requirement in order to sustain a finding of guilt [as to 'conspiracy'] in accord with existing law.

l. Ground Twelve: JURY MISCONDUCT VIOLATED PETITIONER'S CONSTITUTIONAL RIGHT TO RECEIVE A FAIR TRIAL BY ". . an impartial jury. ." IN ACCORD WITH THE 6TH AMENDT.

Supporting Facts: The jury foreman produced a computer generated 'spread-sheets' [which he secreted into the jury room] to be used by the entire jury. This [f]act which was admitted in post-trial letter to the trial judge] was misconduct and resulted in a post-trial letter to the trial judge] was misconduct and resulted in the illegal influence of the other jurors, violating the PETITIONER's Constitutional right to ". . an impartial jury. ."

m. Ground Thirteen: INEFFECTIVE ASSISTANCE OF [TRIAL] COUNSEL DENIED PETITIONER'S CONSTITUTIONAL RIGHTS WITH RESPECT TO EFFECTIVE ASSISTANCE AND 6TH AMENDMENT.

Supporting Facts: State appointed counsel failed to request and secure exculpatory evidence and scientific tests available to their office. Additionally, attorneys neglected the essential claim of petitioner's defense that aforesaid 'police-agent' [Bruce Adams] acted to inculpate petitioner as a means of exacting any and all efforts to retaliate against petitioner and his business associate by aforesaid entrapment and to mitigate his criminal activity by cooperaying with any law enforcment agency that would accord him protection and monetary compensation.

n. Ground Fourteen: <u>INEFFECTIVE ASSISTANCE OF [STATE APPOINTED] APPELLATE COUNSEL</u>

<u>Supporting Facts</u>: State appointed appellate counsel failed to bring above stated arguments to the attention of appellate authorities and 'exhaust' all existing remedies to the California Supreme Court and refused to voluntarily return all trial transcripts precluding petitioner from 'exhausting' said remedies on 'direct appeal'. This failure resulted in the present delay and redundant activity which the petitioner now attempts to correct by this Court's prior direction.

o. PETITIONER JOINS IN ALL [APPLICABLE] ISSUES RAISED BY CO-DEFENDANT.

11. If any of the grounds listed in 10 were not previously presented to this court, state briefly which grounds were not so presented and give your reasons. _____

12. Do you have any petition, appeal or parole matter pending in any court, either state or federal as to the judgment of conviction under attack? Yes ( ) No (x)

13. Are you presently represented by counsel? Yes ( ) No (x)

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled to by this proceeding.

Dated this 1 st. day of April, 1998 /s/_____
Richard Herman Ford/
Pro Se

I declare that the foregoing is true and correct under penalty of perjury.

Dated this 1 st. day of April, 1998 /s/_____
Richard Herman Ford
In Propria Persona